Kansas Department of Corrections
Juvenile Services

714 SW Jackson, Suite 300
Topeka, KS 66603

(785) 296-4213
FAX: (785) 296-1412
http://www.doc.ks.gov/juvenile-services

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MISSION

The Kansas Department of Corrections - Juvenile Services assists youth to become successful and productive citizens by providing leadership and support to:

- **Prevent youth from becoming involved in the juvenile justice system**
- **Provide community supervision for youth who are involved in the juvenile justice system**
- **Provide safe, secure, humane and restorative confinement of youth to enhance public safety**
- **Promote public safety by holding youth accountable for their behavior, and improve the ability of youth to live productively and responsibly in their communities**

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CHAPTER 38—MINORS
ARTICLE 16—KANSAS JUVENILE JUSTICE CODE

38-1601. **History:** L. 1982, ch. 182, § 59; L. 1996, ch. 229, § 2; Repealed, L. 2006 ch. 169 § 140; Jan. 1, 2007.

38-1602. **History:** L. 1982, ch. 182, § 60; L. 1983, ch. 140, § 29; L. 1986, ch. 162, § 1; L. 1987, ch. 112, § 37; L. 1989, ch. 95, § 9; L. 1990, ch. 146, § 3; L. 1990, ch. 150, § 6; L. 1993, ch. 291, § 220; L. 1994, ch. 270, § 4; L. 1994, ch. 337, § 2; L. 1996, ch. 229, § 40; L. 1996, ch. 229, § 41; L. 1997, ch. 156, § 44; L. 1997, ch. 156, § 45; L. 1998, ch. 171, § 8; L. 1999, ch.156, § 11; L. 2003, ch. 72, § 2; L. 2003, ch. 158 § 3; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1602a. **History:** L. 1982, ch. 182, § 60; L. 1983, ch. 140, § 29; L. 1986, ch. 162, § 1; L. 1987, ch. 112, § 37; L. 1989, ch. 95, § 9; L. 1990, ch. 146, § 3; L. 1990, ch. 150, § 6; L. 1993, ch. 291, § 220; L. 1994, ch. 270, § 4; L. 1994, ch. 337, § 2; L. 1996, ch. 229, § 40; L. 1996, ch. 229, § 41; L. 1997, ch. 156, § 44; L. 1997 ch. 156, § 45; L. 1998, ch. 187, § 2; Repealed, L. 1999, ch. 116, § 51; Repealed, L. 1999, ch. 156, § 29; May 27.

38-1602b. **History:** L. 1982, ch. 182, § 60; L. 1983, ch. 140, § 29; L. 1986, ch. 162, § 1; L. 1987, ch. 112, § 37; L. 1989, ch. 95, § 9; L. 1990, ch. 146, § 3; L. 1990, ch. 150, § 6; L. 1993, ch. 291, § 220; L. 1994, ch. 270, § 4; L. 1994, ch. 337, § 2; L. 1996, ch. 229, § 40; L. 1996, ch. 229, § 41; L. 1997, ch. 156, § 44; L. 1997, ch. 156, § 45; L. 1998, ch. 171, § 8; L. 1999, ch. 116, § 44; Repealed, L. 2000, ch. 159, § 4; July 1.

38-1603. **History:** L. 1982, ch. 182, § 61; L. 1991, ch. 116, § 1; Repealed; L. 2006, ch. 169 § 140; Jan. 1, 2007.

38-1604. Jurisdiction; placement with department of social and rehabilitation services or juvenile justice authority, costs. (a) Except as provided in K.S.A. 38-1636, and amendments thereto, proceedings concerning a juvenile who appears to be a juvenile offender shall be governed by the provisions of this code.

(b) The district court shall have original jurisdiction to receive and determine proceedings under this code.

(c) When jurisdiction is acquired by the district court over an alleged juvenile offender it may continue until: (1) Sixty days after sentencing, if the juvenile is committed directly to a juvenile correctional facility; (2) the juvenile has attained the age of 23 years, if committed to the custody of the commissioner pursuant to subsection (c) of K.S.A. 38-1665, and amendments thereto, unless an adult sentence is imposed pursuant to an extended jurisdiction juvenile prosecution. If such adult sentence is imposed, jurisdiction shall continue until discharged by the court or other process for the adult sentence; (3) the juvenile has been discharged by the court; or (4) the juvenile has been discharged under the provisions of K.S.A. 38-1675, and amendments thereto.

(d) (1) If a juvenile offender, at the time of sentencing, is in an out of home placement in the custody of the secretary of social and rehabilitation services under the revised Kansas code for care of children, the sentencing court may order the continued placement of the juvenile as a child in need of care unless the offender was adjudicated for a felony or a second, or subsequent, misdemeanor. If the adjudication was for a felony or a second, or subsequent misdemeanor, the continued placement cannot be ordered unless the court finds there are compelling circumstances which require, in the best interest of the juvenile, that the placement should be continued. In considering whether compelling circumstances exist, the court shall consider the reports and recommendations of the foster placement, the contract provider, the secretary of social and rehabilitation services, the presentence investigation and all other relevant factors. If the foster placement refuses to continue the juvenile in the foster placement the court shall not order continued placement as a child in need of care.

(2) If a placement with the secretary of social and rehabilitation services is continued after sentencing, the secretary shall not be responsible for any costs of sanctions imposed under this code.

(3) If such a juvenile offender is placed in the custody of the juvenile justice authority, the secretary of social and rehabilitation services shall not be responsible for furnishing services ordered in the child in need of care proceeding during the time of the placement pursuant to the Kansas juvenile justice code. Nothing in this subsection shall preclude such juvenile offender from accessing services provided by the department of social and rehabilitation services or any other state agency if such juvenile is eligible for such services.

(e) The revised Kansas code for care of children shall apply when necessary to carry out the provisions of subsection (d) of K.S.A. 38-1664, and amendments thereto.

(f) The provisions of this code shall govern with respect to offenses committed on or after July 1, 1997.

History: L. 1982, ch. 182, § 62; L. 1996, ch. 229, § 42; L. 1997, ch. 156, § 46; L. 1997, ch. 156, § 47; L. 1998, ch. 187, § 3; L. 1999, ch. 156, § 12; L. 2006, ch. 200, § 93; Jan. 1, 2007.

38-1605. **History:** L. 1982, ch. 182, § 63; L. 1996, ch. 229, § 43; L. 1999, ch. 51, § 1; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1606. **History:** L. 1982, ch. 182, § 64; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1606a. **History:** L. 1994, ch. 282, § 9; L. 1996, ch. 229, § 44; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1607. **History:** L. 1982, ch. 182, § 65; L. 1988, ch. 139, § 2; L. 1990, ch. 147, § 5; L. 1992, ch. 318, § 5; L. 1993, ch. 164, § 1; L. 1994, ch. 270, § 7; L. 1996, ch. 229, § 45; L. 1996, ch. 229, § 46; Repealed, L. 2006 ch. 169, § 140, Jan. 1, 2007.

38-1607a. **History:** L. 1982, ch. 182, § 65; L. 1988, ch. 139, § 2; L. 1990, ch. 147, § 5; L. 1992, ch. 286, § 14; Repealed, L. 1993, ch. 164, § 3; July 1.

38-1608. Records of law enforcement officers and agencies and municipal courts concerning certain juveniles; disclosure. (a) All records of law enforcement officers and agencies and municipal courts concerning a public offense committed or alleged to have been committed by a juvenile under 14 years of age shall be kept readily distinguishable from criminal and other records and shall not be disclosed to anyone except:

(1) The judge and members of the court staff designated by the judge of a court having the juvenile before it in any proceedings;

(2) parties to the proceedings and their attorneys;

(3) the department of social and rehabilitation services;

(4) any individual, or any officer of a public or private agency or institution, having custody of the juvenile under court order or providing educational, medical or mental health services to the juvenile or a court-approved advocate for the juvenile;

(5) any educational institution to the extent necessary to enable the educational institution to provide the safest possible environment for its pupils and employees;

(6) any educator to the extent necessary to enable the educator to protect the personal safety of the educator and the educator's pupils;

(7) law enforcement officers or county or district attorneys or their staff when necessary for the discharge of their official duties;

(8) the central repository, as defined by K.S.A. 22-4701 and amendments thereto, for use only as a part of the juvenile offender information system established under K.S.A. 38-1618 and amendments thereto;

(9) juvenile intake and assessment workers;

(10) juvenile justice authority;

(11) any other person when authorized by a court order, subject to any conditions imposed by the order; and

(12) as provided in subsection (c).

(b) The provisions of this section shall not apply to records concerning:

(1) A violation, by a person 14 or more years of age, of any provision of chapter 8 of the Kansas Statutes Annotated or of any city ordinance or county resolution which relates to the regulation of traffic on the roads, highways or streets or the operation of self-propelled or nonself-propelled vehicles of any kind;

(2) a violation, by a person 16 or more years of age, of any provision of chapter 32 of the Kansas Statutes Annotated; or

(3) an offense for which the juvenile is prosecuted as an adult.

(c) All records of law enforcement officers and agencies and municipal courts concerning a public offense committed or alleged to have been committed by a juvenile 14 or more years of age shall be subject to the same disclosure restrictions as the records of adults. Information identifying victims and alleged victims of sex offenses, as defined in K.S.A. chapter 21, article 35, shall not be disclosed or open to public inspection under any circumstances. Nothing in this section shall prohibit the victim or any alleged victim of any sex offense from voluntarily disclosing such victim's identity.

(d) Relevant information, reports and records shall be made available to the department of corrections upon request and a showing that the former juvenile has been convicted of a crime and placed in the custody of the secretary of the department of corrections.

(e) All records, reports and information obtained as a part of the juvenile intake and assessment process for juvenile offenders shall be confidential and shall not be disclosed except as provided in this section or by rules and regulations established by the commissioner of juvenile justice.

(1) Any court of record may order the disclosure of such records, reports and other information to any person or entity.

(2) The head of any juvenile intake and assessment program, certified pursuant to the commissioner of juvenile justice, may authorize disclosure of such records, reports and other information to:

(A) A person licensed to practice the healing arts who has before that person a child whom the person reasonably suspects may be abused or neglected;

(B) a court-appointed special advocate for a child, which advocate reports to the court, or an agency having the legal responsibility or authorization to care for, treat or supervise a child;

(C) a parent or other person responsible for the welfare of a child, or such person's legal representative, with protection for the identity of persons reporting and other appropriate persons;

(D) the child or the guardian ad litem for such child;

(E) the police or other law enforcement agency;

(F) an agency charged with the responsibility of preventing or treating physical, mental or emotional abuse or neglect or sexual abuse of children, if the agency requesting the information has standards of confidentiality as strict or stricter than the requirements of the revised Kansas code for care of children or the Kansas juvenile justice code, whichever is applicable;

(G) a person who is a member of a multidisciplinary team;

(H) an agency authorized by a properly constituted authority to diagnose, care for, treat or supervise a child who is the subject of a report or record of child abuse or neglect;

(I) any individual, or public or private agency authorized by a properly constituted authority to diagnose, care for, treat or supervise a child who is the subject of a report or record of child abuse or neglect and specifically includes the following: Physicians, psychiatrists, nurses, nurse practitioners, psychologists, licensed social workers, child development specialists, physicians' assistants, community mental health workers, alcohol and drug abuse counselors and licensed or registered child care providers;

(J) a citizen review board;

(K) an educational institution if related to a juvenile offender that attends such educational institution; and

(L) educators who have exposure to the juvenile offender or who are responsible for pupils who have exposure to the juvenile offender.

(3) To any juvenile intake and assessment worker of another certified juvenile intake and assessment program.

History: L. 1982, ch. 182, § 66; L. 1983, ch. 140, § 30; L. 1984, ch. 157, § 2; L. 1990, ch. 147, § 6; L. 1992, ch. 318, § 6; L. 1993, ch. 164, § 2; L. 1994, ch. 270, § 8; L. 1996, ch. 229, § 47; L. 1996, ch. 229, § 48; L. 1997, ch. 156, § 48; L. 1998, ch. 171, § 9; L. 2006, ch. 200, § 94; Jan. 1, 2007.

38-1609. **History:** L. 1982, ch. 182, § 67; L. 1990, ch. 147, § 7; L. 1996, ch. 229, § 49; L. 2003, ch. 66, § 2; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1610. **History:** L. 1982, ch. 182, § 68; L. 1983, ch. 140, § 31; L. 1986, ch. 129, § 2; L. 1989, ch. 96, § 2; L. 1992, ch. 312, § 14; L. 1996, ch. 229, § 50; L. 1997, ch. 156, § 49; L. 1998, ch. 131, § 7; L. 2005, ch. 168, § 3; Repealed, L. 2006, ch. 169, § 140, Jan. 1, 2007.

38-1611. **History:** L. 1982, ch. 182, § 69; L. 1983, ch. 140, § 32; L. 1984, ch. 157, § 3; L. 1992, ch. 312, § 15; L. 1993, ch. 291, § 221; L. 1994, ch. 291, § 68; L. 1996, ch. 229, § 51; L. 1997, ch. 156, § 50; L. 2001, ch. 208, § 17; Repealed, L. 2006, ch. 169 § 140; Jan. 1, 2007.

38-1612. **History:** L. 1982, ch. 182, § 70; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1613. **History:** L. 1982, ch. 182, § 71; L. 1992, ch. 128, § 10; L. 1996, ch. 234, § 12; L. 1997, ch. 156, § 51; L. 2006, ch. 215, § 9; Repealed, L. 2009, ch. 116, § 27; July 1.

38-1614. **History:** L. 1982, ch. 182, § 72; L. 1983, ch. 140, § 33; L. 1986, ch. 211, § 32; L. 1991, ch. 117, § 1; L. 1996, ch. 167, § 50; L. 1997, ch. 156, § 52; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1615. **History:** L. 1982, ch. 182, § 73, Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1616. **History:** L. 1982, ch. 182, § 74; L. 1983, ch. 140, § 34; L. 1984, ch. 157, § 5; L. 1985, ch. 115, § 42; L. 1991, ch. 112, § 3; L. 1995, ch. 214, § 1; L. 1996, ch. 229, § 54; L. 1996, ch. 229, § 55; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1617. **History:** L. 1983, ch. 140, § 35; L. 1996, ch. 229, § 56; L. 1996, ch. 229, § 57; Repealed, L. 2006, ch. 169, § 140, Jan. 1, 2007.

38-1618. **History:** L. 1983, ch. 140, § 36; L. 1984, ch. 157, § 4; L. 1986, ch. 159, § 2; L. 1990, ch. 149, § 2; L. 1996, ch. 229, § 58; L. 1996, ch. 229, § 59; L. 1997, ch. 156, § 53; L. 1998, ch. 171, § 10; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1619, 38-1620. Reserved.

38-1621. **History:** L. 1982, ch. 182, § 75; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1622. **History:** L. 1982, ch. 182, § 76; L. 1992, ch. 312, § 16; L. 1996, ch. 229, § 60; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1623. **History:** L. 1982, ch. 182, § 77; L. 1995, ch. 251, § 30; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1624. **History:** L. 1982, ch. 182, § 78; L. 1983, ch. 140, § 37; L. 1984, ch. 157, § 6; L. 1986, ch. 156, § 2; L. 1986, ch. 162, § 3; L. 1986, ch. 163, § 1; L. 1993, ch. 291, § 275; L. 1996, ch. 229, § 61; L. 1996, ch. 229, § 62; L. 1998, ch. 187, § 4; L. 1999, ch. 156, § 13; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1625. **History:** L. 1982, ch. 182, § 79; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1626. **History:** L. 1982, ch. 182, § 80; L. 1983, ch. 140, § 38; L. 1992, ch. 312, § 17; L. 1996, ch. 229, § 63; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1627 to 38-1631. History: L. 1982, ch. 182, § § 81 to 85; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1632. History: L. 1982, ch. 182, § 86; L. 1986, ch. 162, § 4; L. 1990, ch. 150, § 1; L. 1992, ch. 312, § 19; L. 1996, ch. 229, § 64; L. 1997, ch. 156, § 54; L. 2000, ch. 150, § 23; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1633. History: L. 1982, ch. 182, § 87; L. 1996, ch. 229, § 65; L. 1997, ch. 156, § 55; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1634. History: L. 1982, ch. 182, § 88; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1635. History: L. 1982, ch. 182, § 89; L. 1995, ch. 214, § 2; L. 1996, ch. 229, § 66; L. 1997, ch. 156, § 56; L. 2004, ch. 144, § 3; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1636. History: L. 1982, ch. 182, § 90; L. 1986, ch. 115, § 82; L. 1990, ch. 149, § 3; L. 1991, ch. 89, § 2; L. 1992, ch. 239, § 298; L. 1993, ch. 291, § 222; L. 1996, ch. 229, § 67; L. 1997, ch. 156, § 57; L. 1997, ch. 156, § 58; L. 1998, ch. 187, § 5; L. 1999, ch. 156, § 14, Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1637. History: L. 1982, ch. 182, § 91; L. 1983, ch. 140, § 39; L. 1986, ch. 299, § 5; L. 1992, ch. 312, § 20; L. 1996, ch. 229, § 68; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1638, 38-1639. History: L. 1982, ch. 182, § § 92, 93; L. 1996, ch. 229, § § 69, 70; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1640. History: L. 1986, ch. 162, § 2; L. 1996, ch. 185, § 4; L. 1997, ch. 156, § 59; L. 1998, ch. 187, § 6; L. 1999, ch. 156 § 15; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1641. History: L. 1994, ch. 282, § 6; L. 1994, ch. 337, § 4; L. 1996, ch. 229, § 72; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1642 to 38-1650. Reserved.

38-1651. History: L. 1982, ch. 182, § 94; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1652. History: L. 1982, ch. 182, § 95; L. 1993, ch. 166, § 5; L. 1995, ch. 243, § 1; L. 1996, ch. 229, § 73; L. 1997, ch. 156, § 60; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1653. History: L. 1982, ch. 182, § 96; L. 1996, ch. 229, § 74; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1654. History: L. 1982, ch. 182, § 97; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1655. History: L. 1982, ch. 182, § 98; L. 1995, ch. 251, § 31; L. 1996, ch. 229, § 75; L. 1999, ch. 116, § 45; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1656. History: L. 1982, ch. 182, § 99; L. 1996, ch. 229, § 76; Repealed, L. 2006, ch. 169, § 140, Jan. 1, 2007.

38-1657, 38-1658. History: L. 1986, ch. 119, § § 5, 6; L. 1996, ch. 229, § § 77, 78; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1659, 38-1660. Reserved.

38-1661. History: L. 1982, ch. 182, § 100; L. 1990, ch. 147, § 8; L. 1996, ch. 229, § 79; L. 1997, ch. 156, § 61; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1662. History: L. 1982, ch. 182, § 101; L. 1990, ch. 147, § 9; L. 1991, ch. 113, § 2; L. 1996, ch. 229, § 80; L. 1997, ch. 156, § 62; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1663. History: L. 1982, ch. 182, § 102; L. 1987, ch. 154, § 1; L. 1989, ch. 95, § 10; L. 1990, ch. 48, § 1; L. 1992, ch. 312, § 21; L. 1993, ch. 291, § 223; L. 1994, ch. 270, § 5; L. 1994, ch. 337, § 3; L. 1996, ch. 229, § 81; L. 1997, ch. 156, § 63; L. 1998, ch. 187, § 7; L. 1998, ch. 187, § 8; L. 1999, ch. 156, § 16; L. 2000, ch. 150, § 24; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1663a. History: L. 1982, ch. 182, § 102; L. 1987, ch. 154, § 1; L. 1989, ch. 92, § 29; Repealed, L. 1990, ch. 151, § 2, July 1.

38-1663b. History: L. 1982, ch. 182, § 102; L. 1987, ch. 154, § 1; L. 1989, ch. 95, § 10; L. 1990, ch. 151, § 1; Repealed, L. 1992, ch. 312, § 41; Repealed, L. 1992, ch. 239, § 303; July 1, 1993.

38-1664. Juvenile offenders placed in custody of commissioner, considerations by court; notification of court; reports by commissioner and foster parents; permanency hearing. (a) Prior to placing a juvenile offender in the custody of the commissioner and recommending out-of-home placement, the court shall consider and determine that, where consistent with the need for protection of the community:

(1) Reasonable efforts have been made to maintain the family unit and prevent unnecessary removal of a juvenile offender from the juvenile offender's home, as long as the juvenile offender's safety is assured, or an emergency exists which threatens the safety of the juvenile offender. If

the juvenile offender is in the custody of the secretary of social and rehabilitation services under the Kansas code for the care of children, the secretary shall prepare a report for the court documenting such reasonable efforts. If the juvenile offender is in the custody of the commissioner, the commissioner shall prepare a report for the court documenting such reasonable efforts. Otherwise, the predisposition investigation writer shall prepare a report to the court documenting such reasonable efforts. Reasonable efforts are not required prior to removal if the court finds:

(A) A court of competent jurisdiction has determined that the parent has subjected the juvenile offender to aggravated circumstances;

(B) a court of competent jurisdiction has determined that the parent has been convicted of a murder of another child of the parent; voluntary manslaughter of another child of the parent; aiding or abetting, attempting, conspiring or soliciting to commit such a murder of such a voluntary manslaughter; or a felony assault that results in serious bodily injury to the juvenile offender or another child of the parent; or

(C) the parental rights of the parent with respect to a sibling has been terminated involuntarily.

Such findings must be included in the court's order.

(2) The juvenile offender's removal from the home must be the result of a judicial determination to the effect that continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interests, of the juvenile offender. The contrary to the welfare determination must be made in the first court ruling that sanctions the removal of a juvenile offender from the home.

(3) A permanency plan must be presented at disposition or within 30 days thereafter. If a permanency plan is in place under a child in need of care proceeding, the court may adopt the plan under the present proceeding. If the juvenile offender is placed in the custody of the commissioner, the commissioner shall prepare the plan. The plan must comply with the requirements of K.S.A. 2011 Supp. 38-2263, and amendments thereto. The court shall have the authority to require any person or entity agreeing to participate in the plan to perform as set out in the plan.

(4) The court must determine that reasonable efforts have been made and what progress has been made to finalize the permanency plan that is in effect within 12 months of the date the juvenile offender is considered to have entered foster care and at least once every 12 months thereafter while the juvenile offender is in foster care.

(5) The court must reflect reasonable efforts and contrary to the welfare findings in orders awarding custody to the commissioner temporarily, at sentencing and at modification hearings. If the juvenile offender is placed in the custody of the commissioner, the court shall provide the commissioner with a written copy of any orders entered upon making the order for the purpose of documenting the orders.

(6) If the juvenile offender is placed in the commissioner's custody, the commissioner shall document in writing the reasonable efforts that have been made and the progress made to finalize the permanency plan, before each hearing reviewing the plan.

(b) When a juvenile offender has been placed in the custody of the commissioner, the commissioner shall notify the court in writing of the initial placement of the juvenile offender as soon as the placement has been accomplished. The court shall have no power to direct a specific placement by the commissioner, but may make recommendations to the commissioner. The commissioner may place the juvenile offender in an institution operated by the commissioner, a youth residential facility or a community mental health center. If the court has recommended an out-of-home placement, the commissioner may not return the juvenile offender to the home from which removed without first notifying the court of the plan.

(c) During the time a juvenile offender remains in the custody of the commissioner, the commissioner shall report to the court at least each six months as to the current living arrangement and social and mental development of the juvenile offender and document in writing the reasonable efforts that have been made and the progress made to finalize the permanency plan.

(d) If the juvenile offender is placed outside the juvenile offender's home, a permanency hearing shall be held not more than 12 months after the juvenile offender is placed outside the juvenile offender's home and, if reintegration is a viable alternative, every 12 months thereafter. The court may appoint a guardian ad litem to represent the juvenile offender at the permanency hearing. Juvenile offenders who have been in extended out of home placement shall be provided a permanency hearing within 30 days of a request from the commissioner. If reintegration is not a viable alternative and either adoption or permanent guardianship might be in the best interests of the juvenile offender the county or district attorney shall file a petition alleging the juvenile is a child in need of care and requesting termination of parental rights or the appointment of a permanent guardian pursuant to the revised Kansas code for care of children. If the juvenile offender is placed in foster care, the foster parent or parents shall submit to the court, at least every six months, a report in regard to the juvenile

offender's adjustment, progress and condition. The juvenile justice authority shall notify the foster parent or parents of the foster parents' or parent's duty to submit such report, on a form provided by the juvenile justice authority, at least two weeks prior to the date when the report is due, and the name of the judge and the address of the court to which the report is to be submitted. Such report shall be confidential and shall only be reviewed by the court and the child's attorney.

(e) The report made by foster parents and provided by the commissioner of juvenile justice, pursuant to this section, shall be in substantially the following form:

REPORT FROM FOSTER PARENTS
CONFIDENTIAL

_____ _____
Child's Name Current Address

_____ _____
Parent's Name Foster Parents

_____
Primary Social Worker

Please circle the word which best describes the child's progress

1. Child's adjustment in the home
   excellent good satisfactory needs improvement
2. Child's interaction with foster parents and family members
   excellent good satisfactory needs improvement
3. Child's interaction with others
   excellent good satisfactory needs improvement
4. Child's respect for property
   excellent good satisfactory needs improvement
5. Physical and emotional condition of the child
   excellent good satisfactory needs improvement
6. Social worker's interaction with the child and foster family
   excellent good satisfactory needs improvement
7. School status of child:
   _____ _____
   School Grade

Grades	Good ____	Fair ___	Poor ____
Attendance	Good ____	Fair ___	Poor ____
Behavior	Good ____	Fair ___	Poor ____

8. If visitation with parents has occurred, describe the frequency of visits, with whom, supervised or unsupervised, and any significant events which have occurred. _____
   _____
   _____
9. Your opinion regarding the overall adjustment, progress and condition of the child: _____
   _____
   _____
10. Do you have any special concerns or comments with regard to the child not address by this form? Please specify. _____
    _____
    _____
    _____

History: L. 1982, ch. 182, § 103; L. 1989, ch. 122, § 2; L. 1990, ch. 150, § 8; L. 1994, ch. 324, § 1; L. 1996, ch. 229, § 82; L. 1999, ch. 156, § 17; L. 2000, ch. 150, § 25; L. 2006, ch. 200, § 95; Jan. 1, 2007.

38-1665. History: L. 1982, ch. 182, § 104; L. 1992, ch. 312, § 22; L. 1996, ch. 229, § 83; L. 2003, ch. 66, § 1; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1666. History: L. 1982, ch. 182, § 105; L. 1992, ch. 312, § 23; L. 1996, ch. 229, § 84; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1667. History: L. 1982, ch. 182, § 106; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1668. History: L. 1994, ch. 282, § 7; L. 1994, ch. 337, § 5; L. 1996, ch. 229, § 85; L. 1997, ch. 156, § 65; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1669, 38-1670. Reserved.

38-1671. History: L. 1982, ch. 182, § 107; L. 1990, ch. 150, § 9; L. 1994, ch. 282, § 1; L. 1996, ch. 229, § 86; L. 1997, ch. 156, § 66; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1672. History: L. 1982, ch. 182, § 108; L. 1996, ch. 229, § 87; Repealed, L. 1997, ch. 156, § 115; July 1.

38-1673. History: L. 1982, ch. 182, § 109; L. 1983, ch. 140, § 40; L. 1990, ch. 149, § 4; L. 1994, ch. 282, § 2; L. 1996, ch. 229, § 88; L. 1997, ch. 156, § 67; L. 1999, ch. 156, § 18; L. 2000, ch. 150, § 26; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1674. History: L. 1982, ch. 182, § 110; L. 1996, ch. 229, § 89; L. 1997, ch. 156, § 68; L. 1997, ch. 156, § 69; L. 2000, ch. 150, § 27; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1675. History: L. 1982, ch. 182, § 111; L. 1990, ch. 149, § 5; L. 1994, ch. 282, § 3; L. 1996, ch. 229, § 90; L. 1997, ch. 156, § 70; L. 1997, ch. 156, § 71; L. 2000, ch. 150, § 28; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1676. History: L. 1990, ch. 149, § 12; L. 1994, ch. 282, § 4; L. 1996, ch. 229, § 91; L. 1997, ch. 156, § 72; L. 2000, ch. 150, § 29, Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1677. History: L. 1994, ch. 282, § 12; L. 1996, ch. 229, § 92; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1678 to 38-1680. Reserved.

38-1681. History: L. 1982, ch. 182, § 112; L. 1996, ch. 229, § 93; L. 1997, ch. 156, § 73; L. 1997, ch. 156, § 74; L. 1999, ch. 156, § 19; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1682. History: L. 1982, ch. 182, § 113; L. 1983, ch. 140, § 41; L. 1996, ch. 229, § 94; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1683. **History:** L. 1982, ch. 182, § 114; L. 1986, ch. 115, § 83; L. 1994, ch. 282, § 10; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1684. **History:** L. 1982, ch. 182, § 115; Repealed, L. 2006, ch. 169 § 140; Jan. 1, 2007.

38-1685. **History:** L. 1982, ch. 182, § 116, Repealed, L. 2006, ch. 169 § 140; Jan. 1, 2007.

38-1686 to 38-1690. Reserved.

38-1691. **History:** L. 1990, ch. 150, § 7; L. 1996, ch. 229, § 95; L. 1997, ch. 156, § 75; L. 1998, ch. 187, § 10; L. 2000, ch. 150, § 30; Repealed, L. 2006, ch. 169 § 140; Jan. 1, 2007.

38-1692. **History:** L. 1993, ch. 242, § 1; L. 1995, ch. 251, § 32; L. 1996, ch. 215, § 6; L. 1997, ch. 156, § 76; L. 2001, ch. 102, § 4; Repealed, L. 2006, ch. 169 § 140; Jan. 1, 2007.

38-1693 to 38-16,110. Reserved.

38-16,111. **History:** L. 1990, ch. 149, § 10; L. 1996, ch. 229, § 97; L. 1997, ch. 156, § 77; L. 1997, ch. 156, § 78; L. 1998, ch. 187, § 11, Repealed, L. 2006, ch. 169 § 140; Jan. 1, 2007.

38-16,112. **History:** L. 1990, ch. 149, § 11; L. 1992, ch. 239, § 299; L. 1993, ch. 291, § 224; Repealed, L. 1996, ch. 229, § 163; July 1, 1997.

38-16,113 to 38-16,115. Reserved.

38-16,116 to 38-16,118. **History:** L. 1992, ch. 312, § § 24 to 26; L. 1996, ch. 229, § § 98 to 100; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-16,119. **History:** L. 1992, ch. 312, § 27; L. 1996, ch. 229, § 101; L. 2000, ch. 171, § 13; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-16,120. **History:** L. 1992, ch. 312, § 28; L. 1996, ch. 229, § 102; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-16,121 to 38-16,125. Reserved.

38-16,126. **History:** L. 1996, ch. 229, § 8; L. 1997, ch. 156, § 79; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-16,127. **History:** L. 1996, ch. 229, § 9; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-16,128. **History:** L. 1996, ch. 229, § 16; L. 1997, ch. 156, § 80; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-16,129. **History:** L. 1997, ch. 156, § 23; L. 1998, ch. 187, § 9; L. 1999, ch. 156, § 20; L. 2000, ch. 150, § 31; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-16,130. **History:** L. 1997, ch. 156, § 24; Repealed, L. 2007, ch. 195, § 59; July 1.

38-16,131. **History:** L. 1997, ch. 156, § 25; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-16,132. **History:** L. 1999, ch. 156, § 2; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-16,133. **History:** L. 2000, ch. 150, § 34; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-16,134, 38-16,135. **History:** L. 2003, ch. 29, § § 2, 3; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

ARTICLE 23—REVISED KANSAS JUVENILE JUSTICE CODE GENERAL PROVISIONS

38-2301. Citation; goals of the code; policy development. This act shall be known and may be cited as the revised Kansas juvenile justice code. The primary goals of the juvenile justice code are to promote public safety, hold juvenile offenders accountable for their behavior and improve their ability to live more productively and responsibly in the community. To accomplish these goals, juvenile justice policies developed pursuant to the revised Kansas juvenile justice code shall be designed to: (a) Protect public safety; (b) recognize that the ultimate solutions to juvenile crime lie in the strengthening of families and educational institutions, the involvement of the community and the implementation of effective prevention and early intervention programs; (c) be community based to the greatest extent possible; (d) be family centered when appropriate; (e) facilitate efficient and effective cooperation, coordination and collaboration among agencies of the local, state and federal government; (f) be outcome based, allowing for the effective and accurate assessment of program performance; (g) be cost-effectively implemented and administered to utilize resources wisely; (h) encourage the recruitment and retention of well-qualified, highly trained professionals to staff all components of the system; (i) appropriately reflect community norms and public priorities; and (j) encourage public and private partnerships to address community risk factors.

History: L. 2006, ch. 169, § 1; Jan. 1, 2007.

Source or Prior Law:

38-1601.

38-2302. Definitions. As used in this code, unless the context otherwise requires:

(a) "Commissioner" means the commissioner of juvenile justice or the commissioner's designee.

(b) "Conditional release" means release from a term of commitment in a juvenile correctional facility for an aftercare term pursuant to K.S.A. 2011 Supp. 38-2369, and amendments thereto, under conditions established by the commissioner.

(c) "Court-appointed special advocate" means a responsible adult, other than an attorney appointed pursuant to K.S.A. 2011 Supp. 38-2306, and amendments thereto, who is appointed by the court to represent the best interests of a child, as provided in K.S.A. 2011 Supp. 38-2307, and amendments thereto, in a proceeding pursuant to this code.

(d) "Educational institution" means all schools at the elementary and secondary levels.

(e) "Educator" means any administrator, teacher or other professional or paraprofessional employee of an educational institution who has exposure to a pupil specified in subsections (a)(1) through (5) of K.S.A. 72-89b03, and amendments thereto.

(f) "Institution" means the following institutions: The Atchison juvenile correctional facility, the Larned juvenile correctional facility and the Kansas juvenile correctional complex.

(g) "Investigator" means an employee of the juvenile justice authority assigned by the commissioner with the responsibility for investigations concerning employees at the juvenile correctional facilities and juveniles in the custody of the commissioner at a juvenile correctional facility.

(h) "Jail" means: (1) An adult jail or lockup; or

(2) a facility in the same building as an adult jail or lockup, unless the facility meets all applicable licensure requirements under law and there is: (A) Total separation of the juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities; (B) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping and general living activities; and (C) separate juvenile and adult staff, including management, security staff and direct care staff such as recreational, educational and counseling.

(i) "Juvenile" means a person to whom one or more of the following applies, the person: (1) Is 10 or more years of age but less than 18 years of age; (2) is alleged to be a juvenile offender; or (3) has been adjudicated as a juvenile offender and continues to be subject to the jurisdiction of the court.

(j) "Juvenile correctional facility" means a facility operated by the commissioner for the commitment of juvenile offenders.

(k) "Juvenile corrections officer" means a certified employee of the juvenile justice authority working at a juvenile correctional facility assigned by the commissioner with responsibility for maintaining custody, security and control of juveniles in the custody of the commissioner at a juvenile correctional facility.

(l) "Juvenile detention facility" means a public or private facility licensed pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, which is used for the lawful custody of alleged or adjudicated juvenile offenders.

(m) "Juvenile intake and assessment worker" means a responsible adult authorized to perform intake and assessment services as part of the intake and assessment system established pursuant to K.S.A. 75-7023, and amendments thereto.

(n) "Juvenile offender" means a person who commits an offense while 10 or more years of age but less than 18 years of age which if committed by an adult would constitute the commission of a felony or misdemeanor as defined by K.S.A. 2011 Supp. 21-5102, and amendments thereto, or who violates the provisions of K.S.A. 41-727, subsection (j) of K.S.A. 74-8810 or subsection (a)(14) of K.S.A. 2011 Supp. 21-6301, and amendments thereto, but does not include: (1) A person 14 or more years of age who commits a traffic offense, as defined in subsection (d) of K.S.A. 8-2117, and amendments thereto;

(2) a person 16 years of age or over who commits an offense defined in chapter 32 of the Kansas Statutes Annotated, and amendments thereto;

(3) a person under 18 years of age who previously has been:

(A) Convicted as an adult under the Kansas criminal code;

(B) sentenced as an adult under the Kansas criminal code following termination of status as an extended jurisdiction juvenile pursuant to K.S.A. 2011 Supp. 38-2364, and amendments thereto; or

(C) convicted or sentenced as an adult in another state or foreign jurisdiction under substantially similar procedures described in K.S.A. 2011 Supp. 38-2347, and amendments thereto, or because of attaining the age of majority designated in that state or jurisdiction.

(o) "Law enforcement officer" means any person who by virtue of that person's office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

(p) "Parent" when used in relation to a juvenile, includes a guardian and every person who is, by law, liable to maintain, care for or support the juvenile.

(q) "Risk assessment tool" means an instrument administered to juveniles which delivers a score, or group of scores, describing, but not limited to describing, the juvenile's potential risk to the community.

(r) "Sanctions house" means a facility which is operated or structured so as to ensure that all entrances and exits from the facility are under the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeters of the facility, or which relies on locked rooms and buildings, fences or physical restraint in order to control the behavior of its residents. Upon an order from the court, a licensed juvenile detention facility may serve as a sanctions house.

(s) "Warrant" means a written order by a judge of the court directed to any law enforcement officer commanding the officer to take into custody the juvenile named or described therein.

(t) "Youth residential facility" means any home, foster home or structure which provides 24-hour-a-day care for juveniles and which is licensed pursuant to article 5 of chapter 65 or article 70 of chapter 75 of the Kansas Statutes Annotated, and amendments thereto.

History: L. 2006, ch. 169, § 2; L. 2008, ch. 101, § 1; L. 2010, ch. 4, § 2; L. 2011, ch. 30, §158; July 1.

Source or Prior Law:

38-1602.

38-2303. Time limitations. (a) Proceedings under this code involving acts committed by a juvenile which, if committed by an adult, would constitute a violation of K.S.A. 21-3401 or 21-3402, prior to their repeal, or section 37 or 38 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, may be commenced at any time.

(b) Except as provided by subsections (d) and (f), a proceeding under this code for any act committed by a juvenile which, if committed by an adult, would constitute a violation of any of the following statutes shall be commenced within five years after its commission if the victim is less than 16 years of age: (1) Indecent liberties with a child as defined in K.S.A. 21-3503, prior to its repeal, or subsection (a) K.S.A. 2011 Supp. 21-5506, and amendments thereto; (2) aggravated indecent liberties with a child as defined in K.S.A. 21-3504, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5506, and amendments thereto; (3) lewd and lascivious behavior as defined in K.S.A. 21-3508, prior to its repeal, or K.S.A. 2011 Supp. 21-5513, and amendments thereto; (4) indecent solicitation of a child as defined in K.S.A. 21-3510, prior to its repeal, or subsection (a) of K.S.A. 2011 Supp. Supp. 21-5508, and amendments thereto; (5) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5508, and amendments thereto; (6) sexual exploitation of a child as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2011 Supp. 21-5510, and amendments thereto; (7) unlawful voluntary sexual relations as defined in K.S.A. 21-3522, prior to its repeal, or K.S.A. 2011 Supp. 21-5507, and amendments thereto; or (8) aggravated incest as defined in K.S.A. 21-3603, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5604, and amendments thereto.

(c) Except as provided by subsections (d) and (f), a prosecution for rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2011 Supp. 21-5503, and amendments thereto, or aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5504, and amendments thereto, shall be commenced within five years after its commission.

(d)(1) Except as provided in subsection (f), a prosecution for any offense provided in subsection (b) or a sexually violent offense as defined in K.S.A. 22-3717, and amendments thereto, shall be commenced within the limitation of time provided by the law pertaining to such offense or one year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later.

(2) For the purposes of this subsection, "DNA" means deoxyribonucleic acid.

(e) Except as provided by subsection (f), proceedings under this code not governed by subsections (a), (b), (c) or (d) shall be commenced within two years after the act giving rise to the proceedings is committed.

(f) The period within which the proceedings must be commenced shall not include any period in which:

(1) The accused is absent from the state;

(2) the accused is so concealed within the state that process cannot be served upon the accused;

(3) the fact of the offense is concealed; or

(4) whether or not the fact of the offense is concealed by the active act or conduct of the accused, there is substantial competent evidence to believe two or more of the following factors are present: (A) The victim was a child under 15 years of age at the time of the offense; (B) the victim was of such age or intelligence that the victim was unable to determine that the acts constituted an offense; (C) the victim was prevented by a parent or other legal authority from making known to law enforcement authorities the fact of the offense whether or not the parent or other legal authority is the accused; and (D) there is substantial competent expert testimony indicating the victim psychologically

repressed such victim's memory of the fact of the offense, and in the expert's professional opinion the recall of such memory is accurate, free of undue manipulation, and substantial corroborating evidence can be produced in support of the allegations contained in the complaint or information; but in no event may a proceeding be commenced as provided in subsection (f)(4) later than the date the victim turns 28 years of age. Corroborating evidence may include, but is not limited to, evidence the alleged juvenile offender committed similar acts against other persons or evidence of contemporaneous physical manifestations of the offense. Parent or other legal authority shall include, but not be limited to, natural and stepparents, grandparents, aunts, uncles or siblings.

History: L. 2006, ch. 169, § 3; L. 2011, ch. 30, § 159; July 1.

Source or Prior Law:

38-1603.

38-2304. Jurisdiction; presumption of age of juvenile; placement with department of social and rehabilitation services or juvenile justice authority; costs. (a) Except as provided in K.S.A. 2011 Supp. 38-2347, and amendments thereto, proceedings concerning a juvenile shall be governed by the provisions of this code.

(b) The district court shall have original jurisdiction to receive and determine proceedings under this code.

(c) When a complaint is filed under this code, the juvenile shall be presumed to be subject to this code, unless the contrary is proved.

(d) Once jurisdiction is acquired by the district court over an alleged juvenile offender, except as otherwise provided in subsection (e), jurisdiction shall continue until one of the following occurs:

(1) The complaint is dismissed;

(2) the juvenile is adjudicated not guilty at trial;

(3) the juvenile, after being adjudicated guilty and sentenced:

(i) Successfully completes the term of probation or order of assignment to community corrections;

(ii) is discharged by the commissioner pursuant to K.S.A. 2011 Supp. 38-2376, and amendments thereto; or

(iii) reaches the juveniles 21st birthday and no exceptions apply that extend jurisdiction beyond age 21;

(4) the court terminates jurisdiction; or

(5) the offender is convicted of a new felony while the offender is incarcerated in a juvenile correctional facility pursuant to K.S.A. 38-1671 prior to its repeal or K.S.A. 2011 Supp. 38-2373, and amendments thereto, for an offense, which if committed by an adult would constitute the commissioner of a felony.

(e) Once jurisdiction is acquired by the district court over an alleged juvenile offender, it shall continue beyond the juvenile offender's 21st birthday but no later than the juvenile offender's 23rd birthday if either or both of the following conditions apply:

(1) The juvenile offender is sentenced pursuant to K.S.A. 2011 Supp. 38-2369, and amendments thereto, and the term of the sentence including successful completion of aftercare extends beyond the juvenile offender's 21st birthday; or

(2) the juvenile offender is sentenced pursuant to an extended jurisdiction juvenile prosecution and continues to successfully serve the sentence imposed pursuant to the revised Kansas juvenile justice code.

(f) Termination of jurisdiction pursuant to this section shall have no effect on the juvenile offender's continuing responsibility to pay restitution ordered.

(g)(1) If a juvenile offender, at the time of sentencing, is in an out of home placement in the custody of the secretary of social and rehabilitation services under the Kansas code for care of children, the sentencing court may order the continued placement of the juvenile offender as a child in need of care unless the offender was adjudicated for a felony or a second or subsequent misdemeanor. If the adjudication was for a felony or a second or subsequent misdemeanor, the continued placement cannot be ordered unless the court finds there are compelling circumstances which, in the best interest of the juvenile offender, require that the placement should be continued. In considering whether compelling circumstances exist, the court shall consider the reports and recommendations of the foster placement, the contract provider, the secretary of social and rehabilitation services, the presentence investigation and all other relevant factors. If the foster placement refuses to continue the juvenile in the foster placement the court shall not order continued placement as a child in need of care.

(2) If a placement with the secretary of social and rehabilitation services is continued after sentencing, the secretary shall not be responsible for any costs of sanctions imposed under this code.

(3) If the juvenile offender is placed in the custody of the juvenile justice authority, the secretary of social and rehabilitation services shall not be responsible for furnishing services ordered in the child in need of care proceeding during the time of the placement pursuant to the revised Kansas juvenile justice code. Nothing in this subsection shall preclude the juvenile offender from accessing other services provided by the department of social and rehabilitation services or any other state agency if the juvenile offender is otherwise eligible for the services.

(h) A court's order issued in a proceeding pursuant to this code, shall take precedence over such orders in a proceeding under chapter 23 of

the Kansas Statutes Annotated, and amendments thereto, the Kansas family law code, a proceeding under article 31 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, protection from abuse act, a proceeding under article 21 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, adoption and relinquishment act, a proceeding under article 30 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, guardians and conservators, or a comparable case in another jurisdiction, except as provided by K.S.A. 2011 Supp. 23-37,101 *et seq*., and amendments thereto, uniform child custody jurisdiction and enforcement act.

History: L. 2006, ch. 169, § 4; L. 2007, ch. 198, § 7; L. 2008, ch. 169, § 20; L. 2010, ch. 75, § 18; L. 2011, ch. 24, § 7; L. 2012, ch. 162, § 67; May 31, 2012.

Source or Prior Law:

38-1604, 38-1615, 38-1667.

38-2305. Venue. (a) Venue for proceedings in any case involving a juvenile shall be in any county where any act of the alleged offense was committed.

(b) Except as provided in subsection (c), venue for sentencing proceedings shall be in the county of the juvenile offender's residence or, if the juvenile offender is not a resident of this state, in the county where the adjudication occurred. When the sentencing hearing is to be held in a county other than where the adjudication occurred, upon adjudication, the judge shall contact the sentencing court and advise the judge of the transfer. The adjudicating court shall send immediately to the sentencing court a facsimile or electronic copy of the complaint, the adjudication journal entry or judge's minutes, if available, and any recommendations in regard to sentencing. The adjudicating court shall also send to the sentencing court a complete copy of the official and social files in the case by mail or electronic means within seven days of the adjudication.

(c) If the juvenile offender is adjudicated in a county other than the county of the juvenile offender's residence, the sentencing hearing may be held in the county in which the adjudication was made or, if there are not any ongoing proceedings under the Kansas code for care of children, in the county of the residence of the custodial parent, parents, guardian or conservator if the adjudicating judge, upon motion, finds that it is in the interest of justice. If there are ongoing proceedings under the revised Kansas code for care of children, then the sentencing hearing shall be held in the county in which the proceedings under the revised Kansas code for care of children are being held.

History: L. 2006, ch. 169, § 5; L. 2010, ch. 5, § 4; L. 2010, ch. 155, § 14; L. 2011, ch. 48, § 2; July 1.

Source or Prior Law:

38-1605.

Revisor's Note:

Section was amended twice in the 2010 session, see also 38-2305a.

Section was also amended by L. 2010, ch. 70, § 7, and L. 2010, ch. 75, § 19, but those versions were repealed by L. 2010, ch. 55, § 26.

38-2305a. **History:** L. 2006, ch. 169, § 5; L. 2010, ch. 135, § 49; Repealed, L. 2011, ch. 48, § 19; July 1.

38-2306. Right to an attorney. (a) *Appointment of attorney to represent juvenile.* A juvenile is entitled to have the assistance of an attorney at every stage of the proceedings. If a juvenile appears before any court without an attorney, the court shall inform the juvenile and the juvenile's parent of the right to employ an attorney. Upon failure to retain an attorney, the court shall appoint an attorney to represent the juvenile. The expense of the appointed attorney may be assessed to the juvenile, the parent, or both, as part of the expenses of the case.

(b) *Continuation of representation.* An attorney appointed for a juvenile shall continue to represent the juvenile at all subsequent court hearings in the proceeding under this code, including appellate proceedings, unless relieved by the court upon a showing of good cause or upon transfer of venue.

(c) *Attorney fees.* An attorney appointed pursuant to this section shall be allowed a reasonable fee for services, which may be assessed as an expense in the proceedings as provided in K.S.A. 2011 Supp. 38-2314, and amendments thereto.

History: L. 2006, ch. 169, § 6; Jan. 1, 2007.

Source or Prior Law:

38-1606.

38-2307. Court-appointed special advocate; immunity from liability; supreme court rules. (a) In addition to the attorney appointed pursuant to K.S.A. 2011 Supp. 38-2306, and amendments thereto, the court at any stage of a proceeding pursuant to this code may appoint a volunteer court-appointed special advocate for a juvenile who shall serve until discharged by the court and whose primary duties shall be to advocate the best interests of the juvenile and assist the juvenile in obtaining a permanent, safe and appropriate placement. The court-appointed special advocate shall have such qualifications and perform such specific duties and responsibilities as prescribed by rule of the supreme court.

(b) Any person participating in a judicial proceeding as a court-appointed special advocate shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any

civil liability that otherwise might be incurred or imposed.

(c) The supreme court shall promulgate rules governing court-appointed special advocate programs related to proceedings in the district courts pursuant to this code.

History: L. 2006, ch. 169, § 7; Jan. 1, 2007.

Source or Prior law:

38-1606a.

38-2308. Local citizen review board; duties and powers. (a) The local citizen review board created pursuant to K.S.A. 2011 Supp. 38-2207, and amendments thereto, shall have the duty, authority and power to:

(1) Review each case of a child who is a juvenile offender referred by the judge, receive verbal information from all persons with pertinent knowledge of the case and have access to materials contained in the court's files on the case;

(2) determine the progress which has been toward rehabilitation for the juvenile offender; and

(3) make recommendations to the judge regarding further actions on the case.

(b) The initial review by the local citizen review board may take place any time after adjudication for a juvenile offender. A review shall occur within six months after the initial disposition hearing.

(c) The local citizen review board shall review each referred case at least once each year.

(d) The judge shall consider the local citizen review board recommendations in issuing a sentence pursuant to K.S.A. 2011 Supp. 38-2361, and amendments thereto.

(e) Three members of the local citizen review board must be present to review a case.

(f) The court shall provide a place for the reviews to be held. The local citizen review board members shall travel to the county of the family residence of the child being reviewed to hold the review.

History: L. 2006, ch. 169, § 8; Jan. 1, 2007.

Source or Prior Law:

38-1813.

38-2309. Court records; disclosure; preservation of records. (a) *Official file.* The official file of proceedings pursuant to this code shall consist of the complaint, process, service of process, orders, writs and journal entries reflecting hearings held, judgments and decrees entered by the court. The official file shall be kept separate from other records of the court.

(b) The official file shall be open for public inspection, unless the judge determines that opening the official file for public inspection is not in the best interests of a juvenile who is less than 14 years of age. Information identifying victims and alleged victims of sex offenses, as defined in article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2011 Supp. 21-6419 through 21-6421, and amendments thereto, shall not be disclosed or open to public inspection under any circumstances. Nothing in this section shall prohibit the victim or alleged victim of any sex offense from voluntarily disclosing such victim's identity. An official file closed pursuant to this section and information identifying the victim or alleged victim of any sex offense shall be disclosed only to the following:

(1) A judge of the district court and members of the staff of the court designated by the judge;

(2) parties to the proceedings and their attorneys;

(3) any individual or any public or private agency or institution: (A) Having custody of the juvenile under court order; or (B) providing educational, medical or mental health services to the juvenile;

(4) the juvenile's court appointed special advocate;

(5) any placement provider or potential placement provider as determined by the commissioner or court services officer;

(6) law enforcement officers or county or district attorneys, or their staff, when necessary for the discharge of their official duties;

(7) the Kansas racing commission, upon written request of the commission chairperson, for the purpose provided by K.S.A. 74-8804, and amendments thereto, except that information identifying the victim or alleged victim of any sex offense shall not be disclosed pursuant to this subsection;

(8) juvenile intake and assessment workers;

(9) the commissioner;

(10) any other person when authorized by a court order, subject to any conditions imposed by the order; and

(11) the commission on judicial performance in the discharge of the commission's duties pursuant to article 32 of chapter 20 of the Kansas Statutes Annotated, and amendments thereto.

(c) *Social file.* Reports and information received by the court, other than the official file, shall be privileged and open to inspection only by attorneys for the parties, juvenile intake and assessment workers, court appointed special advocates and juvenile community corrections officers, the juvenile's guardian ad litem, if any, or upon order of a judge of the district court or appellate court. The reports shall not be further disclosed without approval of the court or by being presented as admissible evidence.

(d) *Preservation of records.* The Kansas state historical society shall be allowed to take possession for preservation in the state archives of any court records related to proceedings under the Kansas juvenile justice code or the revised

Kansas juvenile justice code whenever such records otherwise would be destroyed. The Kansas state historical society shall make available for public inspection any unexpunged docket entry or official file in its custody concerning any juvenile 14 or more years of age at the time an offense is alleged to have been committed by the juvenile. No other such records in the custody of the Kansas state historical society shall be disclosed directly or indirectly to anyone for 70 years after creation of the records, except as provided in subsections (b) and (c). A judge of the district court may allow inspection for research purposes of any court records in the custody of the Kansas state historical society related to proceedings under the Kansas juvenile justice code or the revised Kansas juvenile justice code.

(e) Relevant information, reports and records, shall be made available to the department of corrections upon request, and a showing that the former juvenile has been convicted of a crime and placed in the custody of the secretary of corrections.

History: L. 2006, ch. 169, § 9; L. 2008, ch. 145, § 8; L. 2010, ch. 112, § 4; L. 2011, ch. 30, § 160; July 1.

Source or Prior Law:

38-1607.

38-2310. Records of law enforcement officers, agencies and municipal courts concerning certain juveniles; disclosure. (a) All records of law enforcement officers and agencies and municipal courts concerning an offense committed or alleged to have been committed by a juvenile under 14 years of age shall be kept readily distinguishable from criminal and other records and shall not be disclosed to anyone except:

(1) The judge of the district court and members of the staff of the court designated by the judge;

(2) parties to the proceedings and their attorneys;

(3) the department of social and rehabilitation services;

(4) the juvenile's court appointed special advocate, any officer of a public or private agency or institution or any individual having custody of a juvenile under court order or providing educational, medical or mental health services to a juvenile;

(5) any educational institution, to the extent necessary to enable the educational institution to provide the safest possible environment for its pupils and employees;

(6) any educator, to the extent necessary to enable the educator to protect the personal safety of the educator and the educator's pupils;

(7) law enforcement officers or county or district attorneys, or their staff, when necessary for the discharge of their official duties;

(8) the central repository, as defined by K.S.A. 22-4701, and amendments thereto, for use only as a part of the juvenile offender information system established under K.S.A. 2011 Supp. 38-2326, and amendments thereto;

(9) juvenile intake and assessment workers;

(10) the juvenile justice authority;

(11) juvenile community corrections officers;

(12) any other person when authorized by a court order, subject to any conditions imposed by the order; and

(13) as provided in subsection (c).

(b) The provisions of this section shall not apply to records concerning:

(1) A violation, by a person 14 or more years of age, of any provision of chapter 8 of the Kansas Statutes Annotated, and amendments thereto, or of any city ordinance or county resolution which relates to the regulation of traffic on the roads, highways or streets or the operation of self-propelled or nonself-propelled vehicles of any kind;

(2) a violation, by a person 16 or more years of age, of any provision of chapter 32 of the Kansas Statutes Annotated, and amendments thereto; or

(3) an offense for which the juvenile is prosecuted as an adult.

(c) All records of law enforcement officers and agencies and municipal courts concerning an offense committed or alleged to have been committed by a juvenile 14 or more years of age shall be subject to the same disclosure restrictions as the records of adults. Information identifying victims and alleged victims of sex offenses, as defined in article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2011 Supp. 21-6419 through 21-6421, and amendments thereto, shall not be disclosed or open to public inspection under any circumstances. Nothing in this section shall prohibit the victim or any alleged victim of any sex offense from voluntarily disclosing such victim's identity.

(d) Relevant information, reports and records, shall be made available to the department of corrections upon request and a showing that the former juvenile has been convicted of a crime and placed in the custody of the secretary of corrections.

(e) All records, reports and information obtained as a part of the juvenile intake and assessment process for juveniles shall be confidential, and shall not be disclosed except as provided by statutory law and rules and regulations promulgated by the commissioner thereunder.

(1) Any court of record may order the disclosure of such records, reports and other information to any person or entity.

(2) The head of any juvenile intake and assessment program, certified by the

commissioner of juvenile justice, may authorize disclosure of such records, reports and other information to:

(A) A person licensed to practice the healing arts who has before that person a juvenile whom the person reasonably suspects may be abused or neglected;

(B) a court-appointed special advocate for a juvenile or an agency having the legal responsibility or authorization to care for, treat or supervise a juvenile;

(C) a parent or other person responsible for the welfare of a juvenile, or such person's legal representative, with protection for the identity of persons reporting and other appropriate persons;

(D) the juvenile, the attorney and a guardian *ad litem*, if any, for such juvenile;

(E) the police or other law enforcement agency;

(F) an agency charged with the responsibility of preventing or treating physical, mental or emotional abuse or neglect or sexual abuse of children, if the agency requesting the information has standards of confidentiality as strict or stricter than the requirements of the Kansas code for care of children or the revised Kansas juvenile justice code, whichever is applicable;

(G) members of a multidisciplinary team under this code;

(H) an agency authorized by a properly constituted authority to diagnose, care for, treat or supervise a child who is the subject of a report or record of child abuse or neglect;

(I) any individual, or public or private agency authorized by a properly constituted authority to diagnose, care for, treat or supervise a juvenile who is the subject of a report or record of child abuse or neglect, specifically including the following: Physicians, psychiatrists, nurses, nurse practitioners, psychologists, licensed social workers, child development specialists, physicians' assistants, community mental health workers, alcohol and drug abuse counselors and licensed or registered child care providers;

(J) a citizen review board pursuant to K.S.A. 2011 Supp. 38-2207, and amendments thereto;

(K) an educational institution to the extent necessary to enable such institution to provide the safest possible environment for pupils and employees of the institution;

(L) any educator to the extent necessary for the protection of the educator and pupils; and

(M) any juvenile intake and assessment worker of another certified juvenile intake and assessment program.

History: L. 2006, ch. 169, § 10; L. 2011, ch. 30, § 160; July 1.

Source or Prior Law:

38-1608.

38-2311. Records of diagnostic, treatment or medical records concerning juveniles; penalties. (a) When the court has exercised jurisdiction over any juvenile the diagnostic, treatment or medical records shall be privileged and shall not be disclosed except:

(1) Upon the written consent of the former juvenile or, if the juvenile is under 18 years of age, by the parent of the juvenile;

(2) upon a determination by the head of the treatment facility, who has the records, that disclosure is necessary for the further treatment of the juvenile;

(3) when any court having jurisdiction of the juvenile orders disclosure;

(4) when authorized by K.S.A. 2011 Supp. 38-2316, and amendments thereto;

(5) when requested orally or in writing by any attorney representing the juvenile, but the records shall not be further disclosed by the attorney unless approved by the court or presented as admissible evidence;

(6) upon a written request of a juvenile intake and assessment worker in regard to a juvenile when the information is needed for screening and assessment purposes or placement decisions, but the records shall not be further disclosed by the worker unless approved by the court;

(7) upon a determination by the juvenile justice authority that disclosure of the records is necessary for further treatment of the juvenile; or

(8) upon a determination by the department of corrections that disclosure of the records is necessary for further treatment of the juvenile.

(b) Intentional violation of this section is a class C nonperson misdemeanor.

(c) Nothing in this section shall operate to extinguish any right of a juvenile established by attorney-client, physician-patient, psychologist-client or social worker-client privileges.

(d) Relevant information, reports and records shall be made available to the department of corrections upon request and a showing that the juvenile has been placed in the custody of the secretary of corrections.

History: L. 2006, ch. 169, § 11; Jan. 1, 2007.

Source or Prior Law:

38-1609.

38-2312. Expungement of records. [See Revisor's Note] (a) Except as provided in subsection (b), any records or files specified in this code concerning a juvenile may be expunged upon application to a judge of the court of the county in which the records or files are maintained. The application for expungement may be made by the juvenile, if 18 years of age or older or, if the juvenile is less than 18 years of age, by the juvenile's parent or next friend.

(b) There shall be no expungement of records or files concerning acts committed by a juvenile which, if committed by an adult, would constitute a violation of K.S.A. 21-3401, prior to its repeal, or K.S.A. 2011 Supp. 21-5402, and amendments

thereto, murder in the first degree; K.S.A. 21-3402, prior to its repeal, or K.S.A. 2011 Supp. 21-5403, and amendments thereto, murder in the second degree; K.S.A. 21-3403, prior to its repeal, or K.S.A. 2011 Supp. 21-5404, and amendments thereto, voluntary manslaughter; K.S.A. 21-3404, prior to its repeal, or K.S.A. 2011 Supp. 21-5405, and amendments thereto, involuntary manslaughter; K.S.A. 21-3439, prior to its repeal, or K.S.A. 2011 Supp. 21-5401, and amendments thereto, capital murder; K.S.A. 21-3442, prior to its repeal, or subsection (a)(3) of K.S.A. 2011 Supp. 21-5405, and amendments thereto, involuntary manslaughter while driving under the influence of alcohol or drugs; K.S.A. 21-3502, prior to its repeal, or K.S.A. 2011 Supp. 21-5503, and amendments thereto, rape; K.S.A. 21-3503, prior to its repeal, or subsection (a) of K.S.A. 2011 Supp. 21-5506, and amendments thereto, indecent liberties with a child; K.S.A. 21-3504, prior to its repeal or subsection (b) of K.S.A. 2011 Supp. 21-5506, and amendments thereto, aggravated indecent liberties with a child; K.S.A. 21-3506, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5504 and amendments thereto, aggravated criminal sodomy; K.S.A. 21-3510, prior to its repeal, or subsection (a) or K.S.A. 2011 Supp. 21-5508, and amendments thereto, indecent solicitation of a child; K.S.A. 21-3511, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5508, and amendments thereto, aggravated indecent solicitation of a child; K.S.A. 21-3516, prior to its repeal, or K.S.A. 2011 Supp. 21-5510, and amendments thereto, sexual exploitation; K.S.A. 21-3603, prior to its repeal or subsection (b) of K.S.A. 2011 Supp. 21-5604, and amendments thereto, aggravated incest; K.S.A. 21-3608, prior to its repeal, or subsection (a) of K.S.A. 2011 Supp. 21-5601, and amendments thereto, endangering a child; K.S.A. 21-3609, prior to its repeal or K.S.A. 2011 Supp. 21-5602, and amendments thereto, abuse of a child, or which would constitute an attempt to commit a violation of any of the offenses specified in this subsection.

(c) Notwithstanding any other law to the contrary, for any offender who is required to register as provided in the Kansas offender registration act, K.S.A. 22-4901 *et seq*., and amendments thereto, there shall be no expungement of any conviction or any part of the offender's criminal record while the offender is required to register as provided in the Kansas offender registration act.

(d) When a petition for expungement is filed, the court shall set a date for a hearing on the petition and shall give notice thereof to the county or district attorney. The petition shall state: (1) The juvenile's full name; (2) the full name of the juvenile as reflected in the court record, if different than (1); (3) the juvenile's sex and date of birth; (4) the offense for which the juvenile was adjudicated; (5) the date of the trial; and (6) the identity of the trial court. Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of $100. On and after the effective date of this act through June 30, 2013, the supreme court may impose a charge, not to exceed $19 per case, to fund the costs of non-judicial personnel. All petitions for expungement shall be docketed in the original action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner.

(e)(1) After hearing, the court shall order the expungement of the records and files if the court finds that:

(A) The juvenile has reached 23 years of age or that two years have elapsed since the final discharge;

(B) since the final discharge of the juvenile, the juvenile has not been convicted of a felony or of a misdemeanor other than a traffic offense or adjudicated as a juvenile offender under the revised Kansas juvenile justice code and no proceedings are pending seeking such a conviction or adjudication; and

(C) the circumstances and behavior of the petitioner warrant expungement.

(2) The court may require that all court costs, fees and restitution shall be paid.

(f) Upon entry of an order expunging records or files, the offense which the records or files concern shall be treated as if it never occurred, except that upon conviction of a crime or adjudication in a subsequent action under this code the offense may be considered in determining the sentence to be imposed. The petitioner, the court and all law enforcement officers and other public offices and agencies shall properly reply on inquiry that no record or file exists with respect to the juvenile. Inspection of the expunged files or records thereafter may be permitted by order of the court upon petition by the person who is the subject thereof. The inspection shall be limited to inspection by the person who is the subject of the files or records and the person's designees.

(g) A certified copy of any order made pursuant to subsection (a) or (d) shall be sent to the Kansas bureau of investigation which shall notify every juvenile or criminal justice agency which may possess records or files ordered to be expunged. If the officer or agency fails to comply with the order within a reasonable time after its receipt, the agency fails to comply with the order within a reasonable time after its receipt, such agency may be adjudged in contempt of court and punished accordingly.

(h) The court shall inform any juvenile who has been adjudicated a juvenile offender of the provisions of this section.

(i) Nothing in this section shall be construed to prohibit the maintenance of information relating to an offense after records or files concerning the offense have been expunged if the information is kept in a manner that does not enable identification of the juvenile.

(j) Nothing in this section shall be construed to permit or require expungement of files or records related to a child support order registered pursuant to the revised Kansas juvenile justice code.

(k) Whenever the records or files of any adjudication have been expunged under the provisions of this section, the custodian of the records or files of adjudication relating to that offense shall not disclose the existence of such records or files, except when requested by:

(1) The person whose record was expunged;

(2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;

(3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;

(4) the secretary of social and rehabilitation services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services of any person whose record has been expunged;

(5) a person entitled to such information pursuant to the terms of the expungement order;

(6) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(7) the governor or the Kansas racing commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission;

(8) the Kansas sentencing commission; or

(9) the Kansas bureau of investigation, for the purposes of:

(A) Completing a person's criminal history record information within the central repository in accordance with K.S.A. 22-4701 *et seq*., and amendments thereto; or

(B) providing information or documentation to the federal bureau of investigation in connection with the national instant criminal background check system, to determine a person's qualification to possess a firearm.

(l) The provisions of subsection (k)(9) shall apply to all records created prior to, on and after July 1, 2011.

History: L. 2006, ch. 169, § 12; L. 2010, ch. 62, § 11; L. 2011, ch. 87, § 11; L. 2012, ch. 66, § 13; April 12, 2012.

Source or Prior Law:

38-1610.

Revisor's Note: Section was amended three times during the 2011 Session; see also 38-2312a and 38-2312b.

Section was also amended by L. 2011, ch. 30, § 162, but that version was repealed by L. 2011, ch. 100, §22.

38-2312a. **History:** L. 2006, ch. 169, § 12; L. 2010, ch. 62, § 11; L. 2011, ch. 30, § 162; L. 2011, ch. 100, § 13; Repealed, L. 2012, ch. 66, § 21; April 12, 2012.

38-2312b. **History:** L. 2006, ch. 169, § 12; L. 2010, ch. 62, § 11; L. 2011, ch. 95, § 12; Repealed, L. 2012, ch. 66, § 21; April 12, 2012.

38-2313. Fingerprints and photographs. (a) Fingerprints or photographs shall not be taken of any juvenile who is taken into custody for any purpose, except that:

(1) Fingerprints or photographs of a juvenile may be taken if authorized by a judge of the district court having jurisdiction;

(2) a juvenile's fingerprints shall be taken, and photographs of a juvenile may be taken, immediately upon taking the juvenile into custody or upon first appearance or in any event before final sentencing, before the court for an offense which, if committed by an adult, would constitute the commission of a felony, a class A or B misdemeanor or assault, as defined by in subsection (a) of K.S.A. 2011 Supp. 21-5412, and amendments thereto;

(3) fingerprints or photographs of a juvenile may be taken under K.S.A. 21-2501, and amendments thereto, if the juvenile has been: (A) Prosecuted as an adult pursuant to K.S.A. 2011 Supp. 38-2347, and amendments thereto; or (B) taken into custody for an offense described in subsection (n)(1) or (n)(2) of K.S.A. 2011 Supp. 38-2302, and amendments thereto;

(4) fingerprints or photographs may be taken of any juvenile admitted to a juvenile correctional facility; and

(5) photographs may be taken of any juvenile placed in a juvenile detention facility. Photographs

taken under this paragraph shall be used solely by the juvenile detention facility for the purposes of identification, security and protection and shall not be disseminated to any other person or agency except after an escape and necessary to assist in apprehension.

(b) Fingerprints and photographs taken under subsection (a)(1) or (a)(2) shall be kept readily distinguishable from those of persons of the age of majority. Fingerprints and photographs taken under subsections (a)(3) and (a)(4) may be kept in the same manner as those of persons of the age of majority.

(c) Fingerprints and photographs of a juvenile shall not be sent to a state or federal repository, except that:

(1) Fingerprints and photographs may be sent to the state and federal repository if authorized by a judge of the district court having jurisdiction;

(2) a juvenile's fingerprints shall, and photographs of a juvenile may, be sent to the state and federal repository if taken under subsection (a)(2) or (a)(4); and

(3) fingerprints or photographs taken under subsections (a)(3) shall be processed and disseminated in the same manner as those of persons of the age of majority.

(d) Fingerprints or photographs of a juvenile may be furnished to another juvenile justice agency, as defined by K.S.A. 2011 Supp. 38-2325, and amendments thereto, if the other agency has a legitimate need for the fingerprints or photographs.

(e) Any fingerprints or photographs of an alleged juvenile offender taken under the provisions of subsection (a)(2) of K.S.A. 38-1611, prior to its repeal, may be sent to a state or federal repository on or before December 31, 2006.

(f) Any law enforcement agency that willfully fails to submit any fingerprints or photographs required by this section shall be liable to the state for the payment of a civil penalty, recoverable in an action brought by the attorney general, in an amount not exceeding $500 for each report not made. Any civil penalty recovered under this subsection shall be paid into the state general fund.

(g) The director of the Kansas bureau of investigation shall adopt any rules and regulations necessary to implement, administer and enforce the provisions of this section, including time limits within which fingerprints shall be sent to a state or federal repository when required by this section.

(h) Nothing in this section shall preclude the custodian of a juvenile from authorizing photographs or fingerprints of the juvenile to be used in any action under the Kansas parentage act, K.S.A. 2011 Supp. 23-2201 et seq., and amendments thereto.

History: L. 2006, ch. 169, § 13; L. 2007, ch. 23 § 1; L. 2011, ch. 30, § 163; L. 2012, ch. 162, § 68; May 31, 2012.

Source or Prior Law:

38-1611.

38-2314. Docket fee and expenses. (a) *Docket fee.* The docket fee for proceedings under this code, if one is assessed as provided by this section, shall be $34. Only one docket fee shall be assessed in each case. Except as provided further, the docket fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for the docket fee. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. On and after the effective date of this act through June 30, 2013, the supreme court may impose an additional charge, not to exceed $22 per docket fee, to fund the costs of non-judicial personnel.

(b) *Expenses.* The expenses for proceedings under this code, including fees and mileage allowed witnesses and fees and expenses approved by the court for appointed attorneys, shall be paid by the board of county commissioners from the general fund of the county.

(c) *Assessment of docket fee and expenses.* (1) *Docket fee.* The docket fee may be assessed or waived by the court conducting the initial sentencing hearing and may be assessed against the juvenile or the parent of the juvenile. Any docket fee received shall be remitted to the state treasurer pursuant to K.S.A. 20-362, and amendments thereto.

(2) *Expenses.* Expenses may be waived or assessed against the juvenile or a parent of the juvenile. When expenses are recovered from a party against whom they have been assessed the general fund of the county shall be reimbursed in the amount of the recovery.

(3) *Prohibited assessment.* Docket fees or expenses shall not be assessed against the state, a political subdivision of the state, an agency of the state or of a political subdivision of the state or a person acting in the capacity of an employee of the state or of a political subdivision of the state.

(d) *Cases in which venue is transferred.* If venue is transferred from one county to another, the court from which the case is transferred shall send to the receiving court a statement of expenses paid from the general fund of the sending county. If the receiving court collects any of the expenses owed in the case, the receiving court shall pay to the sending court an amount proportional to the sending court's share of the total expenses owed to both counties. The expenses of the sending county shall not be an obligation of the receiving county except to the extent that the sending county's proportionate

share of the expenses is collected by the receiving court. Unless otherwise ordered by the court, all amounts collected shall first be applied toward payment of restitution, then toward the payment of the docket fee.

History: L. 2006, ch. 169, § 14; L. 2008, ch. 95, § 10; L. 2009, ch. 116, § 18; L. 2010, ch. 62, § 12; L. 2011, ch. 87, § 12; L. 2012, ch. 66, § 14; April 12, 2012.

Source or Prior Law:

38-1613.

38-2315. Expense of care and custody of juvenile. (a) *How paid.* (1) If a juvenile, subject to this code, is not eligible for assistance under K.S.A. 39-709, and amendments thereto, expenses for the care and custody of the juvenile shall be paid out of the general fund of the county in which the proceedings are initiated. Upon entry of a written order transferring venue pursuant to K.S.A. 2011 Supp. 38-2305, and amendments thereto, expenses shall be paid by the receiving county. For the purpose of this section, a juvenile who is a nonresident of the state of Kansas or whose residence is unknown shall have residence in the county where the proceedings are initiated.

(2) When the custody of a juvenile is awarded to the commissioner, the expenses for the care and custody of the juvenile from the date of custody forward shall not be paid out of the county general fund, except as provided in subsection (d) or K.S.A. 2011 Supp. 38-2373, and amendments thereto. In no event shall the payment authorized by this subsection exceed the state approved rate.

(3) Nothing in this section shall be construed to mean that any person shall be relieved of the legal responsibility to support a juvenile.

(b) *Reimbursement to county general fund.* (1) When expenses for the care and custody of a juvenile subject to this code have been paid out of the county general fund of any county in this state, the court may assess the expenses to the person who by law is liable to maintain, care for or support the juvenile and shall inform the person assessed the expenses of such person's right to a hearing. If a hearing is requested, it shall be granted and the court shall fix a time and place for hearing on the question of requiring payment or reimbursement of all or part of the expenses by a person who by law is liable to maintain, care for or support the juvenile.

(2) After notice to the person who by law is liable to maintain, care for or support the juvenile, the court, if requested, may hear and dispose of the matter and may enter an order relating to payment of expenses for care and custody of the juvenile. If the person willfully fails or refuses to pay the sum, the person may be adjudged in contempt of court and punished accordingly.

(3) Any county which makes payment to maintain, care for or support a juvenile subject to this code, may bring a separate action against a person who by law is liable to maintain, care for or support such juvenile for the reimbursement of expenses paid out of the county general fund for the care and custody of the juvenile.

(c) *Reimbursement to the commissioner.* When expenses for the care and custody of a juvenile subject to this code have been paid by the commissioner, the commissioner may recover the expenses as provided by law from any person who by law is liable to maintain, care for or support the juvenile. The commissioner shall have the power to compromise and settle any claim due or any amount claimed to be due to the commissioner from any person who by law is liable to maintain, care for or support the juvenile. The commissioner may contract with a state agency, contract with an individual or hire personnel to collect the reimbursements required under this subsection.

(d) *Interlocal agreements.* When a county has made an interlocal agreement to maintain, care for or support alleged juvenile offenders or juvenile offenders who are residents of another county and such other county is a party to the interlocal agreement with the county which performs the actual maintenance, care and support of the alleged juvenile offender or juvenile offender, such county of residence may pay from its county general fund to the other county whatever amount is agreed upon in the interlocal agreement irrespective of any amount paid or to be paid by the juvenile justice authority. The juvenile justice authority shall not diminish the amount it would otherwise reimburse any such county for maintaining, caring for and supporting any such juvenile because of any payment under such an interlocal agreement.

History: L. 2006, ch. 169, § 15; Jan. 1, 2007.

Source or Prior Law:

38-1616.

38-2316. Health services. (a) *Physical care and treatment.* (1) When the health or condition of a juvenile who is subject to the jurisdiction of the court requires it, the court may consent to hospital, medical, surgical or dental treatment or procedures including the release and inspection of medical or dental records.

(2) When the health or condition of a juvenile requires it and the juvenile has been placed in the custody of the commissioner or a person other than a parent or placed in or committed to a facility, the custodian or an agent designated by the custodian shall be the personal representative for the purpose of consenting to disclosure of otherwise protected health information and have authority to consent to hospital, medical, surgical or dental treatment or procedures including the release and inspection of medical or dental records, subject to terms and conditions the court

considers proper. A juvenile or parent of a juvenile who is opposed to certain medical procedures authorized by this section may request an opportunity for a hearing thereon before the court. Subsequent to the hearing, the court may authorize or limit the performance of the proposed treatment subject to the terms and conditions the court considers proper. The provisions of this subsection shall also apply to juvenile felons, as defined in K.S.A. 38-16,112, prior to its repeal, and juveniles in the custody of the department of corrections pursuant to K.S.A. 2011 Supp. 38-2366, and amendments thereto, who have been placed in a juvenile correctional facility pursuant to K.S.A. 75-5206, and amendments thereto.

(3) Any health care provider, who in good faith renders hospital, medical, surgical or dental care or treatment to any juvenile after a consent has been obtained as authorized by this section, shall not be liable in any civil or criminal action for failure to obtain consent of a parent.

(4) Nothing in this section shall be construed to mean that any person shall be relieved of legal responsibility to provide care and support for a juvenile.

(b) *Mental care and treatment.* If it is brought to the court's attention, while the court is exercising jurisdiction over a juvenile under this code, that the juvenile may be a mentally ill person as defined in K.S.A. 59-2946, and amendments thereto, the court may:

(1) Direct or authorize the county or district attorney or the person supplying the information to file the petition provided for in K.S.A. 59-2957, and amendments thereto, and proceed to hear and determine the issues raised by the application as provided in the care and treatment act for mentally ill persons; or

(2) authorize the juvenile to seek voluntary admission to a treatment facility as provided in K.S.A. 59-2949, and amendments thereto.

The application to determine whether the juvenile is a mentally ill person may be filed in the same proceedings as the petition alleging the juvenile to be a juvenile offender or may be brought in separate proceedings. In either event, the court may enter an order staying any further proceedings under this code until all proceedings have been concluded under the care and treatment act for mentally ill persons.

History: L. 2006, ch. 169, § 16; Jan. 1, 2007.

Source or Prior Law:

38-1614.

38-2317. Infectious disease testing and counseling; disclosure of results; penalties. (a) As used in this section:

(1) "Adjudicated person" means a person found to be a juvenile offender or a person found not to be a juvenile offender because of mental disease or defect.

(2) "Laboratory confirmation" means positive test results from a confirmation test approved by the secretary of health and environment.

(3) "Sexual act" means contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva or the mouth and the anus. For purposes of this definition contact involving the penis occurs upon penetration, however slight.

(4) "Infectious disease test" means a test approved by the secretary of health and environment.

(5) "Body fluids" means blood, semen or vaginal secretions or any body fluid visibly contaminated with blood.

(6) "Infectious disease" means any disease communicable from one person to another through contact with bodily fluids.

(b) At the time of the first appearance before the court of a person charged with an offense involving a sexual act committed while the person was a juvenile, or in which it appears from the nature of the charge that the transmission of body fluids from one person to another may have been involved, the judge shall inform the person or the parent or legal guardian of the person of the availability of infectious disease testing and counseling and shall cause each alleged victim of the offense and if the alleged victim is a minor, the parent, if any, to be notified that infectious disease testing and counseling is available.

(c) If the victim of the offense or if the victim is a minor, if the victim's parent requests the court to order infectious disease tests of the alleged offender or if the person charged with the offense stated to law enforcement officers that such person has an infectious disease or is infected with an infectious disease, or used words of like effect, the court shall order the person charged with the offense to submit to infectious disease tests as defined in K.S.A. 65-6001, and amendments thereto.

(d) For any offense by an adjudicated person which the court determines, from the facts of the case, involved or was likely to have involved the transmission of body fluids from one person to another or involved a sexual act, the court: (1) May order the adjudicated person to submit to infectious disease tests; or (2) shall order the adjudicated person to submit to infectious disease tests if a victim of the offense, or the parent or legal guardian of the victim if the victim is a minor, requests the court to make such order. If an infectious disease test is ordered under this subsection, a victim who is an adult shall designate a health care provider or counselor to receive the information on behalf of the victim. If a victim is a minor, the parent or legal guardian of the victim shall designate the health care provider or counselor to receive the information. If testing for HIV or hepatitis B infection results in a

negative reaction, the court shall order the adjudicated person to submit to another test for HIV or hepatitis B infection six months after the first test was administered.

(e) The results of infectious disease tests ordered under this section shall be disclosed to the court which ordered the test, to the adjudicated person, or the parent or legal guardian of the adjudicated person, and to each person designated under subsection (d) by a victim or by the parent or legal guardian of a victim. If infectious disease tests ordered under this section results in a laboratory confirmation, the results shall be reported to the secretary of health and environment and to: (1) The commissioner of juvenile justice, in the case of a juvenile offender or a person not adjudicated because of mental disease or defect, for inclusion in such offender's or person's medical file; or (2) the secretary of corrections, in the case of a person under 16 years of age who has been convicted as an adult, for inclusion in such person's medical file. The secretary of health and environment shall provide to each victim of the crime or sexual act, at the option of such victim, counseling regarding the human immunodeficiency virus and hepatitis B, testing for HIV or hepatitis B infection in accordance with K.S.A. 65-6001 et seq., and amendments thereto, and referral for appropriate health care and services.

(f) The costs of any counseling and testing provided under subsection (e) by the secretary of health and environment shall be paid from amounts appropriated to the department of health and environment for that purpose. The court shall order the adjudicated person to pay restitution to the department of health and environment for the costs of any counseling provided under this section and the costs of any test ordered or otherwise performed under this section.

(g) When a court orders an adjudicated person to submit to infectious disease tests under this section, the withdrawal of the blood may be performed only by: (1) A person licensed to practice medicine and surgery or a person acting under the supervision of any such licensed person; (2) a licensed professional nurse or a licensed practical nurse; or (3) a qualified medical technician. No person authorized by this subsection to withdraw blood, no person assisting in the performance of infectious disease tests nor any medical care facility where blood is withdrawn or tested that has been ordered by the court to withdraw or test blood shall be liable in any civil or criminal action when the test is performed in a reasonable manner according to generally accepted medical practices.

(h) The results of tests or reports, or information therein, obtained under this section shall be confidential and shall not be divulged to any person not authorized by this section or authorized in writing by the juvenile to receive the results or information. Any violation of this section is a class C nonperson misdemeanor.

History: L. 2006, ch. 169, § 17; L. 2008, ch. 169, § 18; Jan. 1.

Source or Prior Law:

38-1692.

CHILD SUPPORT ORDERS UNDER THE CODE

38-2318. Determination of parentage. When there is a dispute with respect to parentage, the court may stay child support proceedings, if any are pending in the case, until the dispute is resolved by a separate action under the Kansas parentage act, K.S.A. 2011 Supp. 23-2201 et seq., and amendments thereto. Nothing in this section shall be construed to limit the power of the court to carry out the purposes of the revised Kansas juvenile justice code.

History: L. 2006, ch. 169, § 18; L. 2012, ch. 162, § 69; May 31, 2012.

Source or Prior Law:

38-16,116.

38-2319. Determination of child support. (a) The court shall order child support unless good cause is shown why such support should not be ordered. In determining the amount of a child support order under the revised Kansas juvenile justice code, the court shall apply the Kansas child support guidelines adopted pursuant to K.S.A. 20-165, and amendments thereto.

(b) If necessary to carry out the intent of this section, the court may refer the matter to the secretary of social and rehabilitation services for child support enforcement.

History: L. 2006, ch. 169, § 19; Jan. 1, 2007.

Source or Prior Law:

38-16,117.

38-2320. Journal entry for child support. When child support is ordered pursuant to the revised Kansas juvenile justice code, a separate journal entry or judgment form shall be made for each parent ordered to pay child support. The journal entry or judgment form shall be entitled: "In the matter of _____ and _____"
(obligee's name) (obligor's name)
and shall contain no reference to the official file or social file in the case except the facts necessary to establish personal jurisdiction over the parent, the name and date of birth of each child and findings of fact and conclusions of law directly related to the child support obligation. If the court issues an income withholding order for the parent, the order shall be captioned in the same manner.

History: L. 2006, ch. 169, § 20; Jan. 1, 2007.

Source or Prior Law:

38-16,118.

38-2321. Withholding order for child support; filing; service. (a) A party entitled to receive child support under an order issued pursuant to the revised Kansas juvenile justice code may file with the clerk of the district court in the county in which the judgment was rendered the original child support order and the original income withholding order, if any. If the original child support or income withholding order is unavailable for any reason, a certified or authenticated copy of the order may be substituted. The clerk of the district court shall number the child support order as a case filed under chapter 60 of the Kansas Statutes Annotated, and amendments thereto, and enter the numbering of the case on the appearance docket of the case. Registration of a child support order under this section shall be without cost or docket fee.

(b) If the number assigned to a case under the revised Kansas juvenile justice code appears in the caption of a document filed pursuant to this section, the clerk of the district court may obliterate that number and replace it with the new case number assigned pursuant to this section.

(c) The filing of the child support order shall constitute registration under this section. Upon registration of the child support order, all matters related to that order, including, but not limited to modification of the order, shall proceed under the new case number. Registration of a child support order under this section does not confer jurisdiction in the registration case for custody or parenting time issues.

(d) The party registering a child support order shall serve a copy of the registered child support order and income withholding order, if any, upon the parties by first-class mail. The party registering the child support order shall file, in the official file for each child affected, either a copy of the registered order showing the new case number or a statement that includes the caption, new case number and date of registration of the child support order.

(e) If the commissioner of juvenile justice is entitled to receive payment under an order which may be registered under this section, the county or district attorney shall take the actions permitted or required in subsections (a) and (d) on behalf of the commissioner, unless otherwise requested by the commissioner.

(f) A child support order registered pursuant to this section shall have the same force and effect as an original child support order entered under chapter 60 of the Kansas Statutes Annotated, and amendments thereto, including, but not limited to:

(1) The registered order shall become a lien on the real estate of the judgment debtor in the county from the date of registration;

(2) execution or other action to enforce the registered order may be had from the date of registration;

(3) the registered order may itself be registered pursuant to any law, including, but not limited to, the uniform interstate family support act, article 9 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto;

(4) if any installment of support due under the registered order becomes a dormant judgment, it may be revived pursuant to K.S.A. 60-2404, and amendments thereto; and

(5) the court shall have continuing jurisdiction over the parties and subject matter and, except as otherwise provided in subsection (g), may modify any prior support order when a material change in circumstances is shown irrespective of the present domicile of the child or parent. The court may make a modification of child support retroactive to a date at least one month after the date that the motion to modify was filed with the court.

(g) If a motion to modify the child support order is filed within three months after the date of registration pursuant to this section, if no motion to modify the order has previously been heard, and if the moving party shows that the support order was based upon a stipulation pursuant to subsection (b)(2) of K.S.A. 2011 Supp. 38-2319, and amendments thereto, the court shall apply the Kansas child support guidelines adopted pursuant to K.S.A. 20-165, and amendments thereto, without requiring any party to show that a material change of circumstances has occurred, without regard to any previous presumption or stipulation used to determine the amount of the child support order, and irrespective of the present domicile of the child or parent. Nothing in this subsection shall prevent or limit enforcement of the support order during the three months after the date of registration.

History: L. 2006, ch. 169, § 21; Jan. 1, 2007.

Source or Prior Law:

38-16,119.

38-2322. Remedies supplemental not substitute. The remedies provided in this code with respect to child support are in addition to and not in substitution for any other remedy.

History: L. 2006, ch. 169, § 22; Jan. 1, 2007.

Source or Prior Law:

38-16,120.

38-2323. Placement under juvenile justice code; assignment of support right. (a) In any case in which the commissioner pays for the expenses of care and custody of a juvenile pursuant to the code, an assignment of all past, present and future support rights of the juvenile in custody possessed by either parent or other person entitled to receive support payments for the juvenile is, by operation of law, conveyed to

the commissioner. Such assignment shall become effective upon placement of a juvenile in the custody of the commissioner or upon payment of the expenses of care and custody of a juvenile by the commissioner without the requirement that any document be signed by the parent or other person entitled to receive support payments for the juvenile. When the commissioner pays for the expenses of care and custody of a juvenile or a juvenile is placed in the custody of the commissioner, the parent or other person entitled to receive support payments for the juvenile is also deemed to have appointed the commissioner, or the commissioner's designee, as attorney in fact to perform the specific act of negotiating and endorsing all drafts, checks, money orders or other negotiable instruments representing support payments received by the commissioner on behalf of the juvenile. This limited power of attorney shall be effective from the date the assignment to support rights becomes effective and shall remain in effect until the assignment of support rights has been terminated in full.

(b) If an assignment of support rights is deemed to have been made pursuant to subsection (a), support payments shall be made to the juvenile justice authority.

(c) If a court has ordered support payments to be made to an applicant for or recipient of financial assistance or other person whose support rights are assigned, the commissioner shall file a notice of the assignment with the court ordering the payments without the requirement that a copy of the notice be provided to the obligee or obligor. The notice shall not require the signature of the applicant, recipient or obligee on any accompanying assignment document. The notice shall include:

(1) A statement that the assignment is in effect;

(2) the name of any juvenile and the caretaker or other adult for whom support has been ordered by the court;

(3) the number of the case in which support was ordered; and

(4) a request that the payments ordered be made to the commissioner of juvenile justice.

(d) Upon receipt of the notice and without the requirement of a hearing or order, the court shall forward all support payments, including those made as a result of any garnishment, contempt, attachment, income withholding, income assignment or release of lien process, to the commissioner until the court receives notification of the termination of the assignment.

(e) If the claim of the commissioner for repayment of the costs of care and custody of a juvenile under the revised Kansas juvenile justice code is not satisfied when such aid is discontinued, the commissioner shall file a notice of partial termination of assignment of support rights with the court which will preserve the assignment in regard to unpaid support rights which were due and owing at the time of the discontinuance of such aid. A copy of the notice of the partial termination of the assignment need not be provided to the obligee or obligor. The notice shall include:

(1) A statement that the assignment has been partially terminated;

(2) the name of any juvenile and the caretaker or other adult for whom support has been ordered by the court;

(3) the number of the case in which support was ordered; and

(4) the date the assignment was partially terminated.

(f) Upon receipt of the notice and without the requirement of a hearing or order, the court shall forward to the commissioner all payments made to satisfy support arrearages due and owing as of the date the assignment of support rights was partially terminated until the court receives notification of the termination of the assignment.

(g) If the commissioner or the commissioner's designee has a notice of assignment of support rights pursuant to subsection (c) or a notice of partial termination of assignment of support rights pursuant to subsection (e) on file with the court ordering support payments, the commissioner shall be considered a necessary party in interest concerning any legal action to enforce, modify, settle, satisfy or discharge an assigned support obligation and, as such, shall be given notice by the party filing such action in accordance with the rules of civil procedure.

(h) Upon written notification by the commissioner's designee that assigned support has been collected pursuant to K.S.A. 44-718 or 75-6201 et seq., and amendments thereto, or section 464 of title IV, part D, of the federal social security act, or any other method of direct payment to the commissioner, the clerk of the court or other record keeper where the support order was established, shall enter the amounts collected by the commissioner in the court's payment ledger or other record to insure that the obligor is credited for the amounts collected.

(i) An assignment of support rights pursuant to subsection (a) shall remain in full force and effect so long as the commissioner is providing public assistance in accordance with a plan under which federal moneys are expended on behalf of the juvenile for the expenses of a juvenile in the commissioner's care or custody pursuant to the code. Upon discontinuance of all such assistance and support enforcement services, the assignment shall remain in effect as to unpaid support obligations due and owing at the time of the discontinuance of assistance until the claim of the commissioner for repayment of the unreimbursed portion of any assistance is satisfied. Nothing herein shall affect or limit the rights of the

commissioner under an assignment of rights to payment for medical care from a third party pursuant to K.S.A. 40-2,161, and amendments thereto.

History: L. 2006, ch. 169, § 23; Jan. 1, 2007.

Source or Prior Law:

38-16,127.

38-2324. Liability of parent or guardian for assistance provided juvenile, exceptions. (a) Except as provided in subsection (b), a juvenile's parent shall be liable to repay to the commissioner of juvenile justice, or any other person or entity who provides services pursuant to a court order issued under the code, any assistance expended on the juvenile's behalf, regardless of the specific program under which the assistance is or has been provided. Such services shall include, but not be limited to, probation, conditional release, aftercare supervision, case management and community corrections. When more than one person is legally obligated to support the juvenile, liability to the commissioner or other person or entity shall be joint and several. The commissioner or other person or entity shall have the power and authority to file a civil action in the name of the commissioner or other person or entity for repayment of the assistance, regardless of the existence of any other action involving the support of the juvenile.

(b) With respect to an individual parent, the provisions of subsection (a) shall not apply to:

(1) Assistance provided on behalf of any person other than the juvenile of the parent;

(2) assistance provided during a month in which the needs of the parent were included in the assistance provided to the juvenile; or

(3) assistance provided during a month in which the parent has fully complied with the terms of an order of support for the juvenile, if a court of competent jurisdiction has considered the issue of support. For the purposes of this subsection, if an order is silent on the issue of support, it shall not be presumed that the court has considered the issue of support. Amounts paid for a particular month pursuant to a judgment under this section shall be credited against the amount accruing for the same month under any other order of support for the juvenile, up to the amount of the current support obligation for that month.

(c) When the assistance provided during a month is on behalf of more than one person, the amount of assistance provided on behalf of one person for that month shall be determined by dividing the total assistance by the number of people on whose behalf assistance was provided.

(d) Actions authorized herein are in addition to and not in substitution for any other remedies.

History: L. 2006, ch. 169, § 24; Jan. 1, 2007.

Source or Prior Law:

38-16,128.

38-2325. Juvenile offender information system; definitions. As used in K.S.A. 2011 Supp. 38-2326, and amendments thereto, unless the context otherwise requires:

(a) "Central repository" has the meaning provided by K.S.A. 22-4701, and amendments thereto.

(b) "Director" means the director of the Kansas bureau of investigation.

(c) "Juvenile offender information" means data relating to juveniles alleged or adjudicated to be juvenile offenders and offenses committed or alleged to have been committed by juveniles in proceedings pursuant to the Kansas juvenile code, the Kansas juvenile justice code or the revised Kansas juvenile justice code.

(d) "Juvenile justice agency" means any county or district attorney, law enforcement agency of this state or of any political subdivision of this state, court of this state or of a municipality of this state, administrative agency of this state or any political subdivision of this state, juvenile correctional facility or juvenile detention facility.

(e) "Reportable event" means:

(1) Issuance of a warrant to take a juvenile into custody;

(2) taking a juvenile into custody pursuant to this code;

(3) release of a juvenile who has been taken into custody pursuant to this code, without the filing of a complaint;

(4) dismissal of a complaint filed pursuant to this code;

(5) a trial in a proceeding pursuant to this code;

(6) a sentence in a proceeding pursuant to this code;

(7) commitment to or placement in a youth residential facility, juvenile detention facility or juvenile correctional facility pursuant to this code;

(8) release or discharge from commitment or jurisdiction of the court pursuant to this code;

(9) escaping from commitment or absconding from placement pursuant to this code;

(10) entry of a mandate of an appellate court that reverses the decision of the trial court relating to a reportable event;

(11) an order authorizing prosecution as an adult;

(12) the issuance of an intake and assessment report;

(13) the report from a reception and diagnostic center; or

(14) any other event arising out of or occurring during the course of proceedings pursuant to this code and declared to be reportable by rules and regulations of the director.

History: L. 2006, ch. 169, § 25; Jan. 1, 2007.

Source or Prior Law:

38-1617.

38-2326. Same; establishment and maintenance. (a) In order to properly advise the three branches of government on the operation of the juvenile justice system, there is hereby established within and as a part of the central repository, a juvenile offender information system. The system shall serve as a repository of juvenile offender information which is collected by juvenile justice agencies and reported to the system.

(b) Except as otherwise provided by this subsection, every juvenile justice agency shall report juvenile offender information, whether collected manually or by means of an automated system, to the central repository, in accordance with rules and regulations adopted pursuant to this section. A juvenile justice agency shall report to the central repository those reportable events involving a violation of a county resolution or city ordinance only when required by rules and regulations adopted by the director.

(c) Reporting methods may include:

(1) Submission of juvenile offender information by a juvenile justice agency directly to the central repository;

(2) if the information can readily be collected and reported through the court system, submission to the central repository by the office of judicial administrator; or

(3) if the information can readily be collected and reported through juvenile justice agencies that are part of a geographically based information system, submission to the central repository by the agencies.

(d) The director may determine, by rules and regulations, the statutorily required reportable events to be reported by each juvenile justice agency, in order to avoid duplication in reporting.

(e) Juvenile offender information maintained in the juvenile offender information system is confidential and shall not be disseminated or publicly disclosed in a manner which enables identification of any individual who is a subject of the information, except that the information shall be open to inspection by law enforcement agencies of this state, by the department of social and rehabilitation services if related to an individual in the secretary's custody or control, by the juvenile justice authority if related to an individual in the commissioner's custody or control, by the department of corrections if related to an individual in the custody and control of the secretary of corrections, by educational institutions to the extent necessary to provide the safest possible environment for pupils and employees, by any educator to the extent necessary for the protection of the educator and pupils, by the officers of any public institution to which the individual is committed, by county and district attorneys, by attorneys for the parties to a proceeding under this code, by an intake and assessment worker or upon order of a judge of the district court or an appellate court. Such information shall reflect the offense level and whether such offense is a person or nonperson offense.

(f) Any journal entry of a trial of adjudication shall state the number of the statute under which the juvenile is adjudicated to be a juvenile offender and specify whether each offense, if done by an adult, would constitute a felony or misdemeanor, as defined by in section 2 of chapter 136 of the 2011 Session Laws of Kansas, and amendments thereto.

(g) Any law enforcement agency that willfully fails to make any report required by this section shall be liable to the state for the payment of a civil penalty, recoverable in an action brought by the attorney general, in an amount not exceeding $500 for each report not made. Any civil penalty recovered under this subsection shall be paid into the state general fund.

(h) The director shall adopt any rules and regulations necessary to implement, administer and enforce the provisions of this section.

(i) The director shall develop incentives to encourage the timely entry of juvenile offender information into the central repository.

History: L. 2006, ch. 169, § 26; L. 2011, ch. 30, § 164; July 1.

Source or Prior Law:

38-1618.

PLEADINGS, PROCESS AND PRELIMINARY MATTERS

38-2327. Commencement of proceedings; duties of county or district attorney. An action under this code shall be commenced by filing a verified complaint with the court and the issuance of process on the complaint. It shall be the duty of each county or district attorney to prepare and file the complaint alleging a juvenile to be a juvenile offender and to prosecute the case.

History: L. 2006, ch. 169, § 27; Jan. 1, 2007.

Source or Prior Law:

38-1612, 38-1621.

38-2328. Pleadings. (a) *Complaint.* (1) The complaint shall be in writing and shall state:

(A) The name, date of birth and residence address of the alleged juvenile offender, if known;

(B) the name and residence address of the alleged juvenile offender's parent, if known, and, if no parent can be found, the name and address of the nearest known relative;

(C) the name and residence address of any persons having custody or control of the alleged juvenile offender;

(D) plainly and concisely the essential facts constituting the offense charged and, if the statement is drawn in the language of the statute,

ordinance or resolution alleged to have been violated, it shall be considered sufficient; and

(E) for each count, the official or customary citation of the statute, ordinance or resolution which is alleged to have been violated, but error in the citation or its omission shall not be grounds for dismissal of the complaint or for reversal of an adjudication if the error or omission did not prejudice the juvenile.

(2) The proceedings shall be entitled: "In the matter of _____, a juvenile."

(3) The complaint shall contain a request that parents be ordered to pay child support in the event the juvenile is removed from the home.

(4) The precise time of the commission of an offense need not be stated in the complaint, but it is sufficient if shown to have been within the statute of limitations, except where the time is an indispensable element of the offense.

(5) At the time of filing, the prosecuting attorney shall endorse upon the complaint the names of all known witnesses. The names of other witnesses that afterward become known to the prosecuting attorney may be endorsed at such times as the court prescribes by rule or otherwise.

(b) *Motions.* Motions may be made orally or in writing. The motion shall state with particularity the grounds for the motion and shall state the relief or order sought. Motions available in civil and criminal procedure are available to the parties under this code.

History: L. 2006, ch. 169, § 28; Jan. 1, 2007.

Source or Prior Law:

38-1622.

38-2329. Notice of defense of alibi or mental disease or defect. A juvenile whose defense to the allegations in the complaint is that of alibi or mental disease or defect shall give written notice to the county or district attorney and the court of such juvenile's proposed defense not less than 14 days prior to the adjudicatory hearing. For good cause shown the court may allow such notice to be given at a later time. The notice shall include the names and addresses of witnesses that the juvenile plans to call to provide evidence in support of the defense. Upon receipt of the notice of the defense of mental disease or defect, the court may order an independent examination of and report on the juvenile.

History: L. 2006, ch. 169, § 29; L. 2010, ch. 135, § 50; July 1.

Source or Prior Law:

38-1623.

38-2330. Juvenile taken into custody, when; procedure; release; detention in jail. (a) A law enforcement officer may take a juvenile into custody when:

(1) Any offense has been or is being committed in the officer's view;

(2) the officer has a warrant commanding that the juvenile be taken into custody;

(3) the officer has probable cause to believe that a warrant or order commanding that the juvenile be taken into custody has been issued in this state or in another jurisdiction for an act committed therein;

(4) the officer has probable cause to believe that the juvenile is committing or has committed an act which, if committed by an adult, would constitute:

(A) A felony; or

(B) a misdemeanor and: (i) The juvenile will not be apprehended or evidence of the offense will be irretrievably lost unless the juvenile is immediately taken into custody; or (ii) the juvenile may cause injury to self or others or damage to property or may be injured unless immediately taken into custody;

(5) the officer has probable cause to believe that the juvenile has violated an order for electronic monitoring as a term of probation; or

(6) the officer receives a written statement pursuant to subsection (c).

(b) A court services officer, juvenile community corrections officer or other person authorized to supervise juveniles subject to this code, may take a juvenile into custody when: (1) There is a warrant commanding that the juvenile be taken into custody; (2) the officer has probable cause to believe that a warrant or order commanding that the juvenile be taken into custody has been issued in this state or in another jurisdiction for an act committed therein; or (3) there is probable cause to believe that the juvenile has violated a term of probation or placement.

(c) Any court services officer, juvenile community corrections officer or other person authorized to supervise juveniles subject to this code, may arrest a juvenile without a warrant or may request any other officer with power of arrest to arrest a juvenile without a warrant by giving the officer a written statement setting forth that the juvenile, in the judgment of the court services officer, juvenile community corrections officer or other person authorized to supervise juveniles subject to this code, has violated the condition of the juvenile's release. The written statement delivered with the juvenile by the arresting officer to the official in charge of a juvenile detention facility or other place of detention shall be sufficient warrant for the detention of the juvenile.

(d) (1) A juvenile taken into custody by a law enforcement officer shall be brought without unnecessary delay to an intake and assessment worker if an intake and assessment program exists in the jurisdiction, or before the court for proceedings in accordance with this code or, if the court is not open for the regular conduct of business, to a court services officer, a juvenile intake and assessment worker, a juvenile

detention facility or youth residential facility which the court or the commissioner shall have designated. The officer shall not take the juvenile to a juvenile detention facility unless the juvenile meets one or more of the criteria listed in subsection (b) of K.S.A. 2011 Supp. 38-2331, and amendments thereto. If the juvenile meets one or more of such criteria, the officer shall first consider whether taking the juvenile to an available nonsecure facility is more appropriate.

(2) It shall be the duty of the officer to furnish the county or district attorney and the juvenile intake and assessment worker if the officer has delivered the juvenile to the worker, with all of the information in the officer's possession pertaining to the juvenile, the juvenile's parent or other persons interested in or likely to be interested in the juvenile and all other facts and circumstances which caused the juvenile to be arrested or taken into custody.

(e) In the absence of a court order to the contrary, the court or officials designated by the court, the county or district attorney or the law enforcement agency taking a juvenile into custody shall have the authority to direct the release prior to the time specified by subsection (a) of K.S.A. 2011 Supp. 38-2343, and amendments thereto. In addition, if an agreement is established pursuant to K.S.A. 2011 Supp. 38-2346, and amendments thereto, a juvenile intake and assessment worker shall have the authority to direct the release of a juvenile prior to a detention hearing after the completion of the intake and assessment process if the juvenile intake and assessment worker has reason to believe that if released the juvenile will appear for further proceedings and will not be dangerous to self or others.

(f) Whenever a person 18 years of age or more is taken into custody by a law enforcement officer for an alleged offense which was committed prior to the time the person reached the age of 18, the officer shall notify and refer the matter to the court for proceedings pursuant to this code, except that the provisions of this code relating to detention hearings shall not apply to that person. If detention is necessary, the person shall be detained in jail. Unless the law enforcement officer took the person into custody pursuant to a warrant issued by the court and the warrant specifies the amount of bond or indicates that the person may be released on personal recognizance, the person shall be taken before the court of the county where the alleged act took place or, at the request of the person, the person shall be taken, without delay, before the nearest court. The court shall fix the terms and conditions of an appearance bond upon which the person may be released from custody. The provisions of article 28 of chapter 22 of the Kansas Statutes Annotated and K.S.A. 22-2901, and amendments thereto, relating to appearance bonds and review of conditions and release shall be applicable to appearance bonds provided for in this section.

History: L. 2006, ch. 169, § 30; Jan. 1, 2007.

Source or Prior Law:

38-1624.

38-2331. Criteria for detention of juvenile in detention facility. (a) If no prior order removing a juvenile from the juvenile's home pursuant to K.S.A. 2011 Supp. 38-2334 or 38-2335, and amendments thereto, has been made, the court shall not enter an order removing a juvenile from the custody of a parent pursuant to this section unless the court first finds probable cause that: (1)(A) The juvenile is likely to sustain harm if not immediately removed from the home;

(B) allowing the juvenile to remain in home is contrary to the welfare of the juvenile; or

(C) immediate placement of the juvenile is in the juvenile's best interest; and

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the juvenile from the juvenile's home or that an emergency exists which threatens the safety of the juvenile. The court shall state the basis for each finding in writing.

(b) Except as provided in subsection (c), a juvenile may be placed in a juvenile detention facility pursuant to subsection (c) or (d) of K.S.A. 2011 Supp. 38-2330 or subsection (e) of K.S.A. 2011 Supp. 38-2343, and amendments thereto, if one or more of the following conditions are met:

(1) There is oral or written verification that the juvenile is a fugitive sought for an offense in another jurisdiction, that the juvenile is currently an escapee from a juvenile detention facility or that the juvenile has absconded from a placement that is court ordered or designated by the juvenile justice authority.

(2) There is probable cause to believe that the juvenile has committed an offense which if committed by an adult would constitute a felony or any crime described in sections 65 through 77 or 229 through 231 of chapter 136 of the 2011 Session Laws of Kansas, and amendments thereto.

(3) The juvenile has been adjudicated for a nonstatus offense and is awaiting final court action on that offense.

(4) The juvenile has a record of failure to appear in court or there is probable cause to believe that the juvenile will flee the jurisdiction of the court.

(5) The juvenile has a history of violent behavior toward others.

(6) The juvenile exhibited seriously assaultive or destructive behavior or self-destructive behavior at the time of being taken into custody.

(7) The juvenile has a record of adjudication or conviction of one or more offenses which if committed by an adult would constitute a felony.

(8) The juvenile is a juvenile offender who has been expelled from placement in a nonsecure facility as a result of the current alleged offense.

(9) The juvenile has been taken into custody by any court services officer, juvenile community corrections officer or other person authorized to supervise juveniles subject to this code pursuant to subsection (b) of K.S.A. 2011 Supp. 38-2330, and amendments thereto.

(10) The juvenile has violated probation or conditions of release.

(c) No person 18 years of age or more shall be placed in a juvenile detention center.

History: L. 2006, ch. 169, § 31; L. 2011, ch. 30, § 165; L. 2012, ch. 69, § 1; July 1, 2012.

Source or Prior Law:

38-1640.

38-2332. Prohibiting placement or detention of juvenile in jail; exceptions; review of records and determination of compliance by juvenile justice authority. (a) No juvenile shall be detained or placed in any jail pursuant to the revised Kansas juvenile justice code except as provided by subsections (b), (c) and (d).

(b) Upon being taken into custody, a juvenile may be detained temporarily in a jail, in quarters with sight and sound separation from adult prisoners, for the purpose of identifying and processing the juvenile and transferring the juvenile to a youth residential facility or juvenile detention facility. If a juvenile is detained in jail under this subsection, the juvenile shall be detained only for the minimum time necessary, not to exceed six hours, and in no case overnight.

(c) The provisions of this section shall not apply to detention of a juvenile:

(1) (A) Against whom a motion has been filed requesting prosecution as an adult pursuant to subsection (a)(2) of K.S.A. 2011 Supp. 38-2347, and amendments thereto; and (B) who has received the benefit of a detention hearing pursuant to K.S.A. 2011 Supp. 38-2331, and amendments thereto;

(2) whose prosecution as an adult or classification as an extended jurisdiction juvenile has been authorized pursuant to K.S.A. 2011 Supp. 38-2347, and amendments thereto; or

(3) who has been convicted previously as an adult under the code of criminal procedure or the criminal laws of another state or foreign jurisdiction.

(d) The provisions of this section shall not apply to the detention of any person 18 years of age or more who is taken into custody and is being prosecuted in accordance with the provisions of the revised Kansas juvenile justice code.

(e) The Kansas juvenile justice authority or the authority's contractor shall have authority to review jail records to determine compliance with the provisions of this section.

History: L. 2006, ch. 169, § 32; Jan. 1, 2007.

Source or Prior Law:

38-1691.

38-2333. Juvenile less than 14, admission or confession from interrogation. (a) When the juvenile is less than 14 years of age, no admission or confession resulting from interrogation while in custody or under arrest may be admitted into evidence unless the confession or admission was made following a consultation between the juvenile's parent or attorney as to whether the juvenile will waive the right to an attorney and the right against self-incrimination. It shall be the duty of the facility where the juvenile has been delivered to make a reasonable effort to contact the parent immediately upon the juvenile's arrival unless the parent is the alleged victim or alleged codefendant of the crime under investigation.

(b) When a parent is the alleged victim or alleged codefendant of the crime under investigation and the juvenile is less than 14 years of age, no admission or confession may be admitted into evidence unless the confession or admission resulting from interrogation while in custody or under arrest was made following a consultation between the juvenile and an attorney, or a parent who is not involved in the investigation of the crime, as to whether the juvenile will waive the right to an attorney and the right against self-incrimination. It shall be the duty of the facility where the juvenile has been delivered to make reasonable effort to contact a parent who is not involved in the investigation of the crime immediately upon such juvenile's arrival.

(c) After an attorney has been appointed for the juvenile in the case, the parent may not waive the juvenile's rights.

History: L. 2006, ch. 169, § 33; Jan. 1, 2007.

Source or Prior Law:

38-1624(c)(3).

38-2334. Removing juvenile from custody of parent; probable cause; foster care. (a) The court shall not issue the first warrant or enter an order removing a juvenile from the custody of a parent pursuant to this section unless the court first finds probable cause that: (1)(A) The juvenile is likely to sustain harm if not immediately removed from the home;

(B) allowing the juvenile to remain in home is contrary to the welfare of the juvenile; or

(C) immediate placement of the juvenile is in the juvenile's best interest; and

(2) reasonable efforts have been made to maintain the family unit and prevent the

unnecessary removal of the juvenile from the juvenile's home or that an emergency exists which threatens the safety of the juvenile. The court shall enter its determination in the warrant or order.

(b) When a juvenile has been in foster care and has been placed at home or allowed a trial home visit for a period of six months or more and is again removed from the home, the court shall again make a determination pursuant to subsection (a).

History: L. 2006, ch. 169, § 34; Jan. 1, 2007.

38-2335. Same; custody of commissioner or SRS; reasonable efforts to maintain family unit; foster care. (a) The court shall not issue the first warrant or enter an order removing a juvenile from the custody of a parent pursuant to this section unless the court first finds probable cause that: (1)(A) The juvenile is likely to sustain harm if not immediately removed from the home;

(B) allowing the juvenile to remain in home is contrary to the welfare of the juvenile; or

(C) immediate placement of the juvenile is in the juvenile's best interest; and

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the juvenile from the juvenile's home or that an emergency exists which threatens the safety of the juvenile. The court shall enter its determination in the warrant or order.

(3) If the juvenile is in the custody of the commissioner, the commissioner shall prepare a report for the court documenting such reasonable efforts.

(4) If the juvenile is in the custody of the secretary of social and rehabilitation services under the Kansas code for the care of children, the secretary shall prepare a report for the court documenting such reasonable efforts.

(5) In all other cases, the person preparing the predisposition report shall include documentation of such reasonable efforts in the report.

(b) If the court determines that reasonable efforts to maintain the family unit and prevent unnecessary removal of a juvenile were not made, the court shall determine whether such reasonable efforts were unnecessary because:

(1) A court of competent jurisdiction has determined that the parent has subjected the juvenile to aggravated circumstances;

(2) a court of competent jurisdiction has determined that the parent has been convicted of a murder of another child of the parent; voluntary manslaughter of another child of the parent; aiding or abetting, attempting, conspiring or soliciting to commit such a murder or such a voluntary manslaughter; or a felony assault that results in serious bodily injury to the juvenile or another child of the parent;

(3) the parental rights of the parent with respect to a sibling have been terminated involuntarily; or

(4) an emergency exists requiring protection of the juvenile and efforts to maintain the family unit and prevent unnecessary removal of the juvenile from the home were not possible.

(c) Nothing in this section shall be construed to prohibit the court from issuing a warrant or entering an order authorizing or requiring removal of the juvenile from the home if the juvenile presents a risk to public safety.

(d) When the juvenile has been in foster care and has been placed at home or allowed a trial home visit for a period of six months or more and is again removed from the home, the court shall again make a determination pursuant to subsections (a) and (b).

History: L. 2006, ch. 169, § 35; Jan. 1, 2007.

38-2336. Proceedings upon filing of complaint. Upon the filing of a complaint under this code, the court shall proceed by one of the following methods:

(a) At any time the juvenile is not being detained, the court may issue summons with copies of the complaint attached stating the place of the hearing and time at which the juvenile is required to appear and answer the offenses charged in the complaint. The hearing shall be within 30 days of the date the complaint is filed. The summons and the complaint shall be delivered to a law enforcement agency or a person specially appointed to serve them.

(b) If the juvenile is being detained for a detention hearing as provided in K.S.A. 2011 Supp. 38-2343, and amendments thereto, at the detention hearing a copy of the complaint shall be served on the juvenile and each parent or other person with whom the juvenile has been residing who is in attendance at the hearing and a record of the service made a part of the proceedings. The court shall announce the time that the juvenile is ordered to appear again before the court for further proceedings. If no parent appears at the hearing, the court shall summon the parent or parents as provided in subsection (a).

(c) If the court is without sufficient information to accomplish service of summons, the court may issue a warrant pursuant to K.S.A. 2011 Supp. 38-2342, and amendments thereto.

History: L. 2006, ch. 169, § 36; Jan. 1, 2007.

Source or Prior Law:

38-16265.

38-2337. Summons; persons upon whom served; form. (a) *Persons upon whom served.* The summons and a copy of the complaint shall be served on the juvenile; if the juvenile's whereabouts are known, any person having legal custody of the juvenile; the person with whom the

juvenile is residing; and any other person designated by the county or district attorney.

(b) *Form.* The summons shall be issued by the clerk, dated the day it is issued, contain the name of the court, the caption of the case and be in a form that complies with the code.

History: L. 2006, ch. 169, § 37; Jan. 1, 2007.

Source or Prior Law:

38-1626.

38-2338. Service of process. (a) Summons, notice of hearing or other process may be served pursuant to K.S.A. 60-303, and amendments thereto, or as provided in subsection (b).

(b) Service may be made by first-class mail, addressed to the individual to be served at the usual place of residence of the person with postage prepaid, and is completed upon the person appearing before the court in response thereto. If the person fails to appear when served by first-class mail, the summons, notice or other process shall be pursuant to K.S.A. 60-303, and amendments thereto.

History: L. 2006, ch. 169, § 38; Jan. 1, 2007.

Source or Prior Law:

38-1627.

38-2339. Proof of service. Proof of service shall be made as follows:

(a) *Personal or residential service.* (1) Every officer to whom summons or other process shall be delivered for service within the state shall make written report of the place, manner and date of service of the process.

(2) If the process, by order of the court, is delivered to a person other than an officer for service, the person shall report the place, manner and time of service by affidavit.

(b) *Service by mail.* The clerk or a deputy clerk shall make service by mail and shall make a written report of the service.

(c) *Amendment of report.* The judge may allow an amendment of a report of service at any time and upon the terms as are deemed just to correctly reflect the true manner of service.

History: L. 2006, ch. 169, § 39; Jan. 1, 2007.

Source or Prior Law:

38-1628.

38-2340. Service of other pleadings. (a) *Proceedings upon filing.* Upon the filing of a subsequent pleading requesting or indicating the necessity for a hearing, the court shall fix the time and place for the hearing.

(b) *Form of notice.* The notice of hearing shall be given by the clerk, dated the day it is issued, contain the name of the court and the caption in the case.

(c) *Method and report of service.* Notice of hearing and motions or other pleadings subsequent to the complaint shall be served and report of service shall be made in the same manner as service of the complaint and summons.

History: L. 2006, ch. 169, § 40; Jan. 1, 2007.

Source or Prior law:

38-1629.

38-2341. Subpoenas and witness fees. (a) A party shall be entitled to the use of subpoenas and other compulsory process to obtain the attendance of witnesses. Except as otherwise provided by this code, the subpoenas and other compulsory process shall be issued and served and the disobedience thereof shall be punished in the same manner as in other civil cases.

(b) The court shall have the power to compel the attendance of witnesses from any county in the state and from out of state for proceedings under this code.

(c) Only witnesses who have been subpoenaed shall be allowed witness fees and mileage. No witness shall be entitled to be paid the fee or mileage before the witness' actual appearance at court.

History: L. 2006, ch. 169, § 41; Jan. 1, 2007.

Source or Prior Law:

38-1630.

38-2342. Issuance of warrants. The court may issue a warrant commanding the juvenile be taken into custody if there is probable cause to believe: (a) That an offense was committed and it was committed by the juvenile; (b) the juvenile violated probation, conditional release, conditions of release or placement; or (c) the juvenile has escaped from a facility. The warrant shall designate where or to whom the juvenile is to be taken if the court is not open for the regular conduct of business. The warrant shall describe the offense or violation charged in the complaint or the applicable circumstances of the juvenile's absconding or escaping.

History: L. 2006, ch. 169, § 42; Jan. 1, 2007.

Source or Prior Law:

38-1631.

38-2343. Detention hearing; waiver; notice; procedure; removal from custody of parent; audio-video communications. (a) *Basis for extended detention; findings and placement.* Whenever a juvenile is taken into custody, the juvenile shall not remain in detention for more than 48 hours, excluding Saturdays, Sundays, legal holidays, and days on which the office of the clerk of the court is not accessible, from the time the initial detention was imposed, unless the court determines after hearing, within the 48-hour period, that further detention is necessary because detention is warranted in light of all relevant factors, including, but not limited to, the criteria listed in K.S.A. 2011 Supp. 38-2331, and amendments thereto, and the juvenile

is dangerous to self or others or is not likely to appear for further proceedings.

(1) If the juvenile is in custody on the basis of a new offense which would be a felony or misdemeanor if committed by an adult and no prior judicial determination of probable cause has been made, the court shall determine whether there is probable cause to believe that the juvenile has committed the alleged offense.

(2) If the court finds the juvenile is dangerous to self or others, the juvenile may be detained in a juvenile detention facility or youth residential facility which the court shall designate.

(3) If the court finds the juvenile is not likely to appear for further proceedings, the juvenile may be detained in a juvenile detention facility or youth residential facility which the court shall designate or may be released upon the giving of an appearance bond in an amount specified by the court and on the conditions the court may impose, in accordance with the applicable provisions of article 28 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto.

(4) In the absence of the necessary findings, the court shall order the juvenile released or placed in temporary custody as provided in subsection (g).

(b) *Waiver of detention hearing.* The detention hearing may be waived in writing by the juvenile and the juvenile's attorney with approval of the court. The right to a detention hearing may be reasserted in writing by the juvenile or the juvenile's attorney or parent at anytime not less than 48 hours prior to trial.

(c) *Notice of hearing.* Whenever it is determined that a detention hearing is required the court shall immediately set the time and place for the hearing. Except as otherwise provided by subsection (c)(1) of K.S.A. 2011 Supp. 38-2332, and amendments thereto, notice of the detention hearing shall be given at least 24 hours prior to the hearing, unless waived.

When there is insufficient time to give written notice, oral notice may be given and is completed upon filing a certificate of oral notice with the clerk.

(d) *Attorney for juvenile.* At the time set for the detention hearing if no retained attorney is present to represent the juvenile, the court shall appoint an attorney, and may recess the hearing for 24 hours, excluding Saturdays, Sundays and legal holidays, to obtain attendance of the attorney appointed.

(e) *Hearing.* The detention hearing is an informal procedure to which the ordinary rules of evidence do not apply. The court may consider affidavits, professional reports and representations of counsel to make the necessary findings, if the court determines that these materials are sufficiently reliable. If probable cause to believe that the juvenile has committed an alleged offense is contested, the court shall allow the opportunity to present contrary evidence or information upon request. If the court orders the juvenile to be detained in a juvenile detention facility, the court shall record the specific findings of fact upon which the order is based.

(f) *Rehearing.* (1) If detention is ordered and the parent was not notified of the hearing and did not appear and later requests a rehearing, the court shall rehear the matter without unnecessary delay.

(2) Within 14 days of the detention hearing, if the juvenile had not previously presented evidence regarding the determination of probable cause to believe that the juvenile has committed an offense, the juvenile may request a rehearing to contest the determination of probable cause to believe that the juvenile has committed an offense. The rehearing request shall identify evidence or information that the juvenile could not reasonably produce at the detention hearing. If the court determines that the evidence or information could not reasonably be produced at the detention hearing, the court shall rehear the matter without unnecessary delay.

(g) *Temporary custody.* If the court determines that detention is not necessary but finds that release to the custody of a parent is not in the best interests of the juvenile, the court may place the juvenile in the temporary custody of some suitable person willing to accept temporary custody or the commissioner. Such finding shall be made in accordance with K.S.A. 2011 Supp. 38-2334 and 38-2335, and amendments thereto.

(h) *Audio-video communications.* Detention hearings may be conducted by two-way electronic audio-video communication between the juvenile and the judge in lieu of personal presence of the juvenile or the juvenile's attorney in the courtroom from any location within Kansas in the discretion of the court. The juvenile may be accompanied by the juvenile's attorney during such proceedings or the juvenile's attorney may be personally present in court as long as a means of confidential communication between the juvenile and the juvenile's attorney is available.

History: L. 2006, ch. 169, § 43; L. 2010, ch. 135, § 51; L. 2012, ch. 69, § 2; July 1, 2012.

Source or Prior Law:

38-1632.

Revisor's Note:

Section was also amended by L. 2010, ch. 11, § 8; but that version was repealed by L. 2010, ch. 135, § 225.

38-2344. First appearance; plea. (a) When the juvenile appears without an attorney in response to a complaint, the court shall inform the juvenile of the following:

(1) The nature of the charges in the complaint;

(2) the right to hire an attorney of the juvenile's own choice;

(3) the duty of the court to appoint an attorney for the juvenile if no attorney is hired by the juvenile or parent; and

(4) that the court may require the juvenile or parent to pay the expense of a court appointed attorney.

Upon request the court shall give the juvenile or parent an opportunity to hire an attorney. If no request is made or the juvenile or parent is financially unable to hire an attorney, the court shall forthwith appoint an attorney for the juvenile. The court shall afford the juvenile an opportunity to confer with the attorney before requiring the juvenile to plead to the allegations of the complaint.

(b) When the juvenile appears with an attorney in response to a complaint, the court shall require the juvenile to plead guilty, *nolo contendere* or not guilty to the allegations stated in the complaint, unless there is an application for and approval of an immediate intervention program. Prior to making this requirement, the court shall inform the juvenile of the following:

(1) The nature of the charges in the complaint;

(2) the right of the juvenile to be presumed innocent of each charge;

(3) the right to jury trial without unnecessary delay;

(4) the right to confront and cross-examine witnesses appearing in support of the allegations of the complaint;

(5) the right to subpoena witnesses;

(6) the right of the juvenile to testify or to decline to testify; and

(7) the sentencing alternatives the court may select as the result of the juvenile being adjudicated a juvenile offender.

(c) If the juvenile pleads guilty to the allegations contained in a complaint or pleads *nolo contendere*, the court shall determine, before accepting the plea and entering a sentence: (1) That there has been a voluntary waiver of the rights enumerated in subsections (b)(2), (3), (4), (5) and (6); and (2) that there is a factual basis for the plea.

(d) If the juvenile pleads not guilty, the court shall schedule a time and date for trial to the court.

(e) First appearance may be conducted by two-way electronic audio-video communication between the juvenile and the judge in lieu of personal presence of the juvenile or the juvenile's attorney in the courtroom from any location within Kansas in the discretion of the court. The juvenile may be accompanied by the juvenile's attorney during such proceedings or the juvenile's attorney may be personally present in court as long as a means of confidential communication between the juvenile and the juvenile's attorney is available.

History: L. 2006, ch. 169, § 44; L. 2011, ch. 60, § 4; July 1.

Source or Prior Law:

38-1633.

38-2345. Nolo contendere. A plea of *nolo contendere* is a formal declaration that the juvenile does not contest the charge. When a plea of *nolo contendere* is accepted the court shall adjudicate the juvenile to be a juvenile offender. The plea cannot be used against the juvenile as an admission in any other action based on the same act.

History: L. 2006, ch. 169, § 45; Jan. 1, 2007.

Source or Prior Law:

38-1634.

38-2346. Immediate intervention programs. (a) Except as provided in subsection (b), each county or district attorney may adopt a policy and establish guidelines for an immediate intervention program by which a juvenile may avoid prosecution. In addition to the county or district attorney adopting policies and guidelines for the immediate intervention programs, the court, the county or district attorney and the director of the intake and assessment center, pursuant to a written agreement, may develop local programs to:

(1) Provide for the direct referral of cases by the county or district attorney or the intake and assessment worker, or both, to youth courts, restorative justice centers, hearing officers or other local programs as sanctioned by the court.

(2) Allow intake and assessment workers to issue a summons, as defined in subsection (e) or if the county or district attorney has adopted appropriate policies and guidelines, allow law enforcement officers to issue such a summons.

(3) Allow the intake and assessment centers to directly purchase services for the juvenile and the juvenile's family.

(4) Allow intake and assessment workers to direct the release of a juvenile prior to a detention hearing after the completion of the intake and assessment process if the juvenile intake and assessment worker has reason to believe that if released the juvenile will appear for further proceedings and is not dangerous to self or others.

(b) An immediate intervention program shall provide that an alleged juvenile offender is ineligible for such program if the juvenile faces pending charges as a juvenile offender, for committing acts which, if committed by an adult, would constitute:

(1) A violation of K.S.A. 8-1567, and amendments thereto, and the juvenile: (A) Has previously participated in an immediate intervention program instead of prosecution of a complaint alleging a violation of that statute or an ordinance of a city in this state which prohibits the acts prohibited by that statute; (B) has previously been adjudicated of a violation of that statute or a

violation of a law of another state or of a political subdivision of this or any other state, which law prohibits the acts prohibited by that statute; or (C) during the time of the alleged violation was involved in a motor vehicle accident or collision resulting in personal injury or death; or

(2) a violation of an off-grid crime, a severity level 1, 2 or 3 felony for nondrug crimes, a drug severity level 1 or 2 felony for drug crimes committed prior to July 1, 2012, or a drug severity level 1, 2, or 3 felony for drug crimes committed on or after July 1, 2012.

(c) An immediate intervention program may include a stipulation, agreed to by the juvenile, the juvenile's attorney and the attorney general or county or district attorney, of the facts upon which the charge is based and a provision that if the juvenile fails to fulfill the terms of the specific immediate intervention agreement and the immediate intervention proceedings are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts.

(d) The county or district attorney may require the parent of a juvenile to be a part of the immediate intervention program.

(e) "Summons" means a written order issued by an intake and assessment worker or a law enforcement officer directing that a juvenile appear before a designated court at a stated time and place to answer a pending charge.

(f) The provisions of this section shall not be applicable in judicial districts that adopt district court rules pursuant to K.S.A. 20-342, and amendments thereto, for the administration of immediate intervention programs by the district court.

History: L. 2006, ch. 169, § 46; L. 2012, ch. 150, § 45; July 1, 2012.

Source or Prior Law:

38-1635.

38-2347. Prosecution as an adult; extended jurisdiction juvenile prosecution; burden of proof; authorization. (a) (1) Except as otherwise provided in this section, at any time after commencement of proceedings under this code against a juvenile and prior to the beginning of an evidentiary hearing at which the court may enter a sentence as provided in K.S.A. 2011 Supp. 38-2356, and amendments thereto, the county or district attorney or the county or district attorney's designee may file a motion requesting that the court authorize prosecution of the juvenile as an adult under the applicable criminal statute. The juvenile shall be presumed to be a juvenile unless good cause is shown to prosecute the juvenile as an adult.

(2) The alleged juvenile offender shall be presumed to be an adult if the alleged juvenile offender was: (A) 14, 15, 16 or 17 years of age at the time of the offense or offenses alleged in the complaint, if any such offense: (i) If committed by an adult, would constitute an off-grid crime, a person felony or a nondrug severity level 1 through 6 felony; (ii) committed prior to July 1, 2012, if committed by an adult prior to July 1, 2012, would constitute a drug severity level 1, 2 or 3 felony; (iii) committed on or after July 1, 2012, if committed by an adult on or after July 1, 2012, would constitute a drug severity level 1, 2, 3 or 4 felony; or (iv) was committed while in possession of a firearm; or (B) charged with a felony or with more than one offense, one or more of which constitutes a felony, after having been adjudicated or convicted in a separate juvenile proceeding as having committed an offense which would constitute a felony if committed by an adult and the adjudications or convictions occurred prior to the date of the commission of the new act charged and prior to the beginning of an evidentiary hearing at which the court may enter a sentence as provided in K.S.A. 2011 Supp. 38-2356, and amendments thereto. If the juvenile is presumed to be an adult, the burden is on the juvenile to rebut the presumption by a preponderance of the evidence.

(3) At any time after commencement of proceedings under this code against a juvenile offender and prior to the beginning of an evidentiary hearing at which the court may enter a sentence as provided in K.S.A. 2011 Supp. 38-2356, and amendments thereto, the county or district attorney or the county or district attorney's designee may file a motion requesting that the court designate the proceedings as an extended jurisdiction juvenile prosecution.

(4) If the county or district attorney or the county or district attorney's designee files a motion to designate the proceedings as an extended jurisdiction juvenile prosecution and the juvenile was 14, 15, 16 or 17 years of age at the time of the offense or offenses alleged in the complaint and: (A) charged with an offense: (i) If committed by an adult, would constitute an off-grid crime, a person felony or a nondrug severity level 1 through 6 felony; (ii) committed prior to July 1, 2012, if committed by an adult prior to July 1, 2012, would constitute a drug severity level 1, 2 or 3 felony; (iii) committed on or after July 1, 2012, if committed by an adult on or after July 1, 2012, would constitute a drug severity level 1, 2, 3 or 4 felony; or (iv) was committed while in possession of a firearm; or (B) charged with a felony or with more than, one offense, one or more of which constitutes a felony, after having been adjudicated or convicted in a separate juvenile proceeding as having committed an act which would constitute a felony if committed by an adult and the adjudications or convictions occurred prior to the date of the commission of the new offense charged, the burden is on the juvenile to rebut the designation of an extended

jurisdiction juvenile prosecution by a preponderance of the evidence. In all other motions requesting that the court designate the proceedings as an extended jurisdiction juvenile prosecution, the juvenile is presumed to be a juvenile. The burden of proof is on the prosecutor to prove the juvenile should be designated as an extended jurisdiction juvenile.

(b) The motion also may contain a statement that the prosecuting attorney will introduce evidence of the offenses alleged in the complaint and request that, on hearing the motion and authorizing prosecution as an adult or designating the proceedings as an extended jurisdiction juvenile prosecution under this code, the court may make the findings required in a preliminary examination provided for in K.S.A. 22-2902, and amendments thereto, and the finding that there is no necessity for further preliminary examination.

(c) (1) Upon receiving the motion, the court shall set a time and place for hearing. The court shall give notice of the hearing to the juvenile, each parent, if service is possible, and the attorney representing the juvenile. The motion shall be heard and determined prior to any further proceedings on the complaint.

(2) At the hearing, the court shall inform the juvenile of the following:

(A) The nature of the charges in the complaint;

(B) the right of the juvenile to be presumed innocent of each charge;

(C) the right to trial without unnecessary delay and to confront and cross-examine witnesses appearing in support of the allegations of the complaint;

(D) the right to subpoena witnesses;

(E) the right of the juvenile to testify or to decline to testify; and

(F) the sentencing alternatives the court may select as the result of the juvenile being prosecuted under an extended jurisdiction juvenile prosecution.

(d) If the juvenile fails to appear for hearing on the motion after having been served with notice of the hearing, the court may hear and determine the motion in the absence of the juvenile. If the court is unable to obtain service of process and give notice of the hearing, the court may hear and determine the motion in the absence of the alleged juvenile offender after having given notice of the hearing at least once a week for two consecutive weeks in the official county newspaper of the county where the hearing will be held.

(e) In determining whether or not prosecution as an adult should be authorized or designating the proceeding as an extended jurisdiction juvenile prosecution, the court shall consider each of the following factors:

(1) The seriousness of the alleged offense and whether the protection of the community requires prosecution as an adult or designating the proceeding as an extended jurisdiction juvenile prosecution;

(2) whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;

(3) whether the offense was against a person or against property. Greater weight shall be given to offenses against persons, especially if personal injury resulted;

(4) the number of alleged offenses unadjudicated and pending against the juvenile;

(5) the previous history of the juvenile, including whether the juvenile had been adjudicated a juvenile offender under this code or the Kansas juvenile justice code and, if so, whether the offenses were against persons or property, and any other previous history of antisocial behavior or patterns of physical violence;

(6) the sophistication or maturity of the juvenile as determined by consideration of the juvenile's home, environment, emotional attitude, pattern of living or desire to be treated as an adult;

(7) whether there are facilities or programs available to the court which are likely to rehabilitate the juvenile prior to the expiration of the court's jurisdiction under this code; and

(8) whether the interests of the juvenile or of the community would be better served by criminal prosecution or extended jurisdiction juvenile prosecution.

The insufficiency of evidence pertaining to any one or more of the factors listed in this subsection, in and of itself, shall not be determinative of the issue. Subject to the provisions of K.S.A. 2011 Supp. 38-2354, and amendments thereto, written reports and other materials relating to the juvenile's mental, physical, educational and social history may be considered by the court.

(f) (1) The court may authorize prosecution as an adult upon completion of the hearing if the court finds from a preponderance of the evidence that the alleged juvenile offender should be prosecuted as an adult for the offense charged. In that case, the court shall direct the alleged juvenile offender be prosecuted under the applicable criminal statute and that the proceedings filed under this code be dismissed.

(2) The court may designate the proceeding as an extended jurisdiction juvenile prosecution upon completion of the hearing if the juvenile has failed to rebut the presumption or the court finds from a preponderance of the evidence that the juvenile should be prosecuted under an extended jurisdiction juvenile prosecution.

(3) After a proceeding in which prosecution as an adult is requested pursuant to subsection (a)(2), and prosecution as an adult is not authorized, the court may designate the

proceedings to be an extended jurisdiction juvenile prosecution.

(4) A juvenile who is the subject of an extended jurisdiction juvenile prosecution shall have the right to a trial by jury, to the effective assistance of counsel and to all other rights of a defendant pursuant to the Kansas code of criminal procedure. Each court shall adopt local rules to establish the basic procedures for extended jurisdiction juvenile prosecution in such court's jurisdiction.

(g) If the juvenile is present in court and the court also finds from the evidence that it appears a felony has been committed and that there is probable cause to believe the felony has been committed by the juvenile, the court may direct that there is no necessity for further preliminary examination on the charges as provided for in K.S.A. 22-2902, and amendments thereto. In that case, the court shall order the juvenile bound over to the district judge having jurisdiction to try the case.

(h) If the juvenile is convicted, the authorization for prosecution as an adult shall attach and apply to any future prosecutions of the juvenile which are or would be cognizable under this code. If the juvenile is not convicted, the authorization for prosecution as an adult shall not attach and shall not apply to future prosecutions of the juvenile which are or would be cognizable under this code.

(i) If the juvenile is prosecuted as an adult under subsection (a)(2) and is not convicted in adult court of an offense listed in subsection (a)(2) but is convicted or adjudicated of a lesser included offense, the juvenile shall be a juvenile offender and receive a sentence pursuant to K.S.A. 2011 Supp. 38-2361, and amendments thereto.

History: L. 2006, ch. 169, § 47; L. 2012, ch. 150, § 46; July 1, 2012.

Source or Prior Law:

38-1636.

38-2348. Proceedings to determine competency. (a) For the purpose of this section, a person charged as a juvenile is incompetent for adjudication as a juvenile offender if, because of mental illness or defect, such person is unable to:

(1) Understand the nature and purpose of the proceedings; or

(2) make or assist in making a defense.

Whenever the words "competent," "competency," "incompetent" and "incompetency" are used without qualification in this code, such words shall refer to the standard for incompetency described in this subsection.

(b) (1) If at any time after such person has been charged as a juvenile there is reason to believe that the juvenile is incompetent for adjudication as a juvenile offender, the proceedings shall be suspended and the court before whom the case is pending shall conduct a hearing to determine the competency of the juvenile. Such a hearing may be held upon the motion of the juvenile's attorney or the prosecuting attorney, or upon the court's own motion.

(2) The court shall determine the issue of competency. To facilitate in this determination, the court may: (A) Appoint a licensed psychiatrist or psychologist to examine the juvenile; or (B) designate a private or public mental health facility to conduct a psychiatric or psychological examination and report to the court. If the examining psychiatrist, psychologist or private or public mental health facility determines that further examination is necessary, the court may commit the juvenile for not more than 60 days to any appropriate public or private institution for examination and report to the court. For good cause shown, the commitment may be extended for another 60 days. No statement made by the juvenile in the course of any examination provided for by this section, whether the examination is with or without the consent of the juvenile, shall be admitted in evidence against the juvenile in any hearing.

(3) Unless the court finds the attendance of the juvenile would be injurious to the juvenile's health, the juvenile shall be present personally at all proceedings under this section.

(c) If the juvenile is found to be competent, the proceedings which have been suspended shall be resumed.

(d) If the juvenile is found to be incompetent, the juvenile shall remain subject to the jurisdiction of the court and shall be committed for evaluation and treatment pursuant to K.S.A. 2011 Supp. 38-2349 and 38-2350, and amendments thereto. One or both parents of the juvenile may be ordered to pay child support pursuant to the Kansas child support guidelines. Upon application of the juvenile and in the discretion of the court, the juvenile may be released to any appropriate private institution upon terms and conditions prescribed by the court.

(e) If at any time after proceedings have been suspended under this section, there are reasonable grounds to believe that a juvenile who has been adjudged incompetent is now competent, the court in which the case is pending shall conduct a hearing to determine the juvenile's present mental condition. Reasonable notice of the hearings shall be given to the prosecuting attorney, the juvenile and the juvenile's attorney of record, if any. If the court, following the hearing, finds the juvenile to be competent, the pending proceedings shall be resumed.

History: L. 2006, ch. 169, § 48; Jan. 1, 2007.

Source or Prior Law:

38-1637.

38-2349. Same; commitment of incompetent. (a) A juvenile who is found to be incompetent pursuant to K.S.A. 2011 Supp. 38-2348, and amendments thereto, shall be committed for evaluation and treatment to any appropriate public or private institution for a period not to exceed 90 days. Within 90 days of the juvenile's commitment to the institution, the chief medical officer of the institution shall certify to the court whether the juvenile has a substantial probability of attaining competency for hearing in the foreseeable future.

(b) If the chief medical officer of the institution certifies that a probability of attaining competency does exist, the court shall order the juvenile to remain in an appropriate public or private institution until the juvenile attains competency or for a period of six months from the date of the original commitment, whichever occurs first. If the juvenile does not attain competency within six months from the date of the original commitment, the court shall order the county or district attorney to commence proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto. If the juvenile appears to have attained competency, the institution shall promptly notify the court in which the case is pending. Upon notice the court shall hold a hearing to determine competency pursuant to subsection (e) of K.S.A. 2011 Supp. 38-2348, and amendments thereto.

(c) If the chief medical officer of the institution certifies that a probability of attaining competency does not exist, the court shall order the county or district attorney to commence proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto.

History: L. 2006, ch. 169, § 49; Jan. 1, 2007.

Source or Prior Law:

38-1638.

38-2350. Same; juvenile not mentally ill person. (a) If, after proceedings as required by K.S.A. 2011 Supp. 38-2349, and amendments thereto, it is determined that a juvenile who has been found incompetent is not a mentally ill person subject to involuntary commitment for care and treatment as defined in subsection (f) of K.S.A. 59-2946, and amendments thereto, the juvenile shall remain in the institution where committed pursuant to K.S.A. 2011 Supp. 38-2348, and amendments thereto. The secretary of social and rehabilitation services shall promptly notify the court in which the proceedings are pending and the commissioner of the result of the proceedings. The court shall then proceed pursuant to subsection (c).

(b) If a juvenile has been found to be a mentally ill person and committed to a state psychiatric hospital for evaluation and treatment pursuant to K.S.A. 2011 Supp. 38-2349, and amendments thereto, but thereafter is to be discharged because such juvenile is not a mentally ill person subject to involuntary commitment for care and treatment as defined in subsection (f) of K.S.A. 59-2946, and amendments thereto, the treatment facility shall promptly notify the court in which the proceedings are pending that the juvenile is to be discharged. The court shall then proceed pursuant to subsection (c).

(c) Unless the court finds pursuant to subsection (c) of K.S.A. 2011 Supp. 38-2348, and amendments thereto, that the proceedings shall be resumed, within seven days after receiving notice pursuant to subsection (a) or (b), the court shall order the juvenile to be discharged from commitment and shall dismiss the charges without prejudice. The period of limitation for the prosecution for the crime charged shall not continue to run until the juvenile has been determined to have attained competency pursuant to subsection (e) of K.S.A. 2011 Supp. 38-2348, and amendments thereto.

History: L. 2006, ch. 169, § 50; L. 2010, ch. 135, § 52, July 1.

Source or Prior Law:

38-1639.

38-2351. Duty of parents and others to appear at all proceedings involving alleged juvenile offender; failure, contempt. (a) Any parent or person with whom a juvenile resides who is served with a summons as provided in K.S.A. 2011 Supp. 38-2337, and amendments thereto, shall appear with the juvenile at all proceedings concerning the juvenile, unless excused by the court having jurisdiction of the matter.

(b) Any person required by this code to be present at all juvenile proceedings who fails to comply, without good cause, with the provisions of subsection (a) may be proceeded against for indirect contempt of court pursuant to the provisions of K.S.A. 20-1204a et seq., and amendments thereto.

(c) As used in this section, "good cause" for failing to appear includes, but is not limited to, a situation where a parent:

(1) Does not have physical custody of the juvenile and resides outside of Kansas;

(2) has physical custody of the juvenile, but resides outside of Kansas and appearing in court will result in undue hardship to such parent; or

(3) resides in Kansas, but is outside of the state at the time of the juvenile proceeding for reasons other than avoiding appearance before the court and appearing in court will result in undue hardship to such parent.

(d) If the parent of any juvenile cannot be found or fails to appear, the court may proceed with the case without the presence of such parent.

History: L. 2006, ch. 169, § 51; Jan. 1, 2007.

Source or Prior Law:
38-1641.

ADJUDICATORY PROCEDURE

38-2352. Time of hearing. All cases filed under the code shall be heard without unnecessary delay. Continuances may be granted to either party for good cause shown.

History: L. 2006, ch. 169, § 52; Jan. 1, 2007.

Source or Prior Law:
38-1651.

38-2353. Hearings; open to the public; restrictions. (a) All hearings shall be open to the public, unless the judge determines that opening the hearing to the public is not in the best interests of the victim or of any juvenile who at the time of the alleged offense was less than 16 years of age.

(b) If the court determines that opening the court proceedings to the public is not in the best interest of the juvenile, the court may exclude all persons except the juvenile, the juvenile's parents, attorneys for parties, officers of the court, the witness testifying and the victim, as defined in subsection (b) of K.S.A. 74-7333, and amendments thereto, or such members of the victim's family, as defined in subsection (c)(2) of K.S.A. 74-7335, and amendments thereto, as the court deems appropriate. Upon agreement of all parties, the court shall allow other persons to attend the hearing unless the court finds the presence of the persons would be disruptive to the proceedings.

(c) As used in this section, "hearings" shall include detention, first appearance, adjudicatory, sentencing and all other hearings held under this code. Nothing in this section shall limit the judge's authority to sequester witnesses.

History: L. 2006, ch. 169, § 53; Jan. 1, 2007.

Source or Prior Law:
38-1652.

38-2354. Rules of evidence. Except as provided in K.S.A. 2011 Supp. 38-2343 and 38-2360, and amendments thereto, the rules of evidence of the code of civil procedure shall apply in all hearings pursuant to this code. The presiding judge shall not consider, read or rely upon any report not properly admitted according to the rules of evidence.

History: L. 2006, ch. 169, § 54; L. 2012, ch. 69, § 3; July 1, 2012.

Source or Prior Law:
38-1653.

38-2355. Degree of proof. In all proceedings on complaints pursuant to the code the state must prove beyond a reasonable doubt that the juvenile committed the act or acts charged in the complaint or a lesser included offense as defined in subsection (b) of section 9 of chapter 136 of the 2011 Session Laws of Kansas, and amendments thereto.

History: L. 2006, ch. 169, § 55; L. 2011, ch. 30, § 166; July 1.

Source or Prior Law:
38-1654.

38-2356. Adjudication. (a) If the court finds that the evidence fails to prove an offense charged or a lesser included offense as defined in subsection (b) of section 9 of chapter 136 of the 2011 Session Laws of Kansas, and amendments thereto, the court shall enter an order dismissing the charge.

(b) If the court finds that the juvenile committed the offense charged or a lesser included offense as defined in subsection (b) of section 9 of chapter 136 of the 2011 Session Laws of Kansas, and amendments thereto, the court shall adjudicate the juvenile to be a juvenile offender and may issue a sentence as authorized by this code.

(c) If the court finds that the juvenile committed the acts constituting the offense charged or a lesser included offense as defined in subsection (b) of section 9 of chapter 136 of the 2011 Session Laws of Kansas, and amendments thereto, but is not responsible because of mental disease or defect, the juvenile shall not be adjudicated as a juvenile offender and shall be committed to the custody of the secretary of social and rehabilitation services and placed in a state hospital. The juvenile's continued commitment shall be subject to annual review in the manner provided by K.S.A. 22-3428a, and amendments thereto, for review of commitment of a defendant suffering from mental disease or defect, and the juvenile may be discharged or conditionally released pursuant to that section. The juvenile also may be discharged or conditionally released in the same manner and subject to the same procedures as provided by K.S.A. 22-3428, and amendments thereto, for discharge of or granting conditional release to a defendant found suffering from mental disease or defect. If the juvenile violates any conditions of an order of conditional release, the juvenile shall be subject to contempt proceedings and returned to custody as provided by K.S.A. 22-3428b, and amendments thereto.

(d) A copy of the court's order shall be sent to the school district in which the juvenile offender is enrolled or will be enrolled.

History: L. 2006, ch. 169, § 56; L. 2011, ch. 30, § 167; July 1.

Source or Prior Law:
38-1655.

38-2357. Jury trials in certain cases. (a) Method of trial. A juvenile is entitled to a trial by one of the following means:

(1) The trial of a felony or misdemeanor case shall be to the court unless the juvenile requests a jury trial in writing within 30 days from the date of the juvenile's entry of a plea of not guilty. The time requirement provided in this subsection regarding when a jury trial shall be requested may be waived in the discretion of the court upon a finding that imposing such a time requirement would cause undue hardship or prejudice to the juvenile.

(A) A jury in a felony case shall consist of 12 members. However, the parties may agree in writing, at any time before the verdict, with the approval of the court, that the jury shall consist of any number less than 12.

(B) A jury in a misdemeanor case shall consist of six members.

(C) When the trial is to a jury, questions of law shall be decided by the court and issues of fact shall be determined by the jury.

(D) Except as otherwise provided by law, the rules and procedures applicable to jury trials in felony cases shall apply to jury trials in misdemeanor cases.

(2) The trial of cigarette or tobacco infraction or traffic infraction cases shall be to the court.

(b) Selection of jury panel. (1) When a jury trial is held, the judge shall summon from the source and in the manner provided for the summoning of other petit jurors in the district court in the county. A sufficient number of jurors shall be called so that after the exercise of peremptory challenges, as provided in this section, there will remain a sufficient number of jurors to enable the court to cause 12 jurors to be sworn in felony cases and six jurors to be sworn in misdemeanor cases. When drawn, a list of prospective jurors and their addresses shall be filed in the office of the clerk of the court and shall be a public record. The qualifications of jurors and grounds for exemption from jury service in civil cases shall be applicable in juvenile trials, except as otherwise provided by law. An exemption from service on a jury is not a basis for challenge, but is the privilege of the person exempted.

(2) The county or district attorney and the juvenile's attorney shall conduct the examination of prospective jurors. The court may conduct an additional examination. The court may limit the examination by the juvenile's attorney or the county or district attorney if the court believes such examination to be harassment, is causing unnecessary delay or serves no useful purpose.

(3) Each party may challenge any prospective juror for cause. All challenges for cause must be made before the jury is sworn to try the case. Challenges for cause shall be tried by the court. A juror may be challenged for cause on any of the following grounds:

(A) The juror is related to the juvenile, or a person alleged to have been injured by the offense charged or the person on whose complaint the adjudication was begun, by consanguinity within the sixth degree, or is the spouse of any person so related.

(B) The juror is the attorney, client, employer, employee, landlord, tenant, debtor, creditor or a member of the household of the juvenile or a person alleged to have been injured by the offense charged or the person on whose complaint the adjudication was instituted.

(C) The juror is or has been a party adverse to the juvenile or the juvenile's parents in a civil action, or has complained against the juvenile in an adjudication or been accused by the juvenile in a criminal prosecution.

(D) The juror has served on a public body which has inquired into the events that are the subject of the adjudication or on any other investigatory body which inquired into the facts of the offense charged.

(E) The juror was a witness to the act or acts alleged to constitute the offense.

(F) The juror occupies a fiduciary relationship to the juvenile or the juvenile's parents or a person alleged to have been injured by the offense or the person on whose complaint the adjudication was instituted.

(G) The juror's state of mind with reference to the case or any of the parties is such that the court determines there is doubt that the juror can act impartially and without prejudice to the substantial rights of any party.

(4) Peremptory challenges shall be allowed as follows:

(A) Each juvenile charged with an offense which, if committed by an adult, would constitute:

(i) An off-grid felony or a nondrug or drug felony ranked at severity level 1 shall be allowed 12 peremptory challenges;

(ii) a nondrug felony ranked at severity level 2, 3, 4, 5 or 6, or a drug felony ranked at severity level 2 or 3, shall be allowed eight peremptory challenges;

(iii) an unclassified felony, a nondrug severity level 7, 8, 9 or 10, or a drug severity level 4 felony, shall be allowed six peremptory challenges; and (iv) a misdemeanor shall be allowed three peremptory challenges.

(B) The state shall be allowed the same number of peremptory challenges as all juveniles.

(C) The most serious penalty offense charged against each juvenile furnishes the criterion for determining the allowed number of peremptory challenges for that juvenile.

(D) Additional peremptory challenges shall not be allowed when separate counts are charged in the complaint.

(5) After the parties have interposed all of their challenges to jurors, or have waived further challenges, the jury shall be sworn to try the case.

(6) A trial judge may empanel one or more alternate or additional jurors whenever, in the judge's discretion, the judge believes it advisable to have such jurors available to replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable to perform their duties. Such jurors shall be selected in the same manner, have the same qualifications and be subject to the same examination and challenges and take the same oath and have the same functions, powers and privileges as the regular jurors. Such jurors may be selected at the same time as the regular jurors or after the jury has been empaneled and sworn, in the judge's discretion. Each party shall be entitled to one peremptory challenge to such alternate jurors. Such alternate jurors shall be seated near the other jurors, with equal power and facilities for seeing and hearing the proceedings in the case, and they must attend at all times upon the trial of the cause in company with the other jurors. They shall obey the orders of and be bound by the admonition of the court upon each adjournment, but if the regular jurors are ordered to be kept in custody during the trial of the cause, such alternate jurors also shall be kept in confinement with the other jurors. Upon final submission of the case to the jury, the alternate jurors may be discharged or they may be retained separately and not discharged until the final decision of the jury. If the alternate jurors are not discharged on final submission of the case and if any regular juror shall be discharged from jury service in any such action prior to the jury reaching its verdict, the court shall draw the name of an alternate juror who shall replace the juror so discharged and be subject to the same rules and regulations as though such juror had been selected as one of the original jurors.

(7) Any objection to the manner in which a jury panel has been selected or drawn shall be raised by a motion to discharge the jury panel. The motion shall be made at least five days prior to the date set for trial if the names and addresses of the panel members and the grounds for objection thereto are known to the parties or can be learned by an inspection of the records of the clerk of the district court at that time; in other cases the motion must be made prior to the time when the jury is sworn to try the case. For good cause shown, the court may entertain the motion at any time thereafter. The motion shall be in writing and shall state facts which, if true, show that the jury panel was improperly selected or drawn. If the motion states facts which, if true, show that the jury panel was improperly selected or drawn, it shall be the duty of the court to conduct a hearing. The burden of proof shall be on the movant. If the court finds that the jury panel was improperly selected or drawn, the court shall order the jury panel discharged and the selection or drawing of a new panel in the manner provided by law.

(8) If a juror has personal knowledge of any fact material to the case, the juror must inform the court and shall not speak of such fact to other jurors out of court. If a juror has personal knowledge of a fact material to the case, gained from sources other than evidence presented at trial and shall speak of such fact to other jurors without the knowledge of the court or the juvenile, the juror may be adjudged in contempt and punished accordingly.

(c) View of place of offense. Whenever in the opinion of the court it is proper for the jurors to have a view of the place in which any material fact occurred, it may order them to be conducted in a body under the charge of an officer to the place, which shall be shown to them by some person appointed by the court for that purpose. They may be accompanied by the juvenile, the juvenile's attorney and the county or district attorney. While the jurors are thus absent, no person other than the officer and the person appointed to show them the place shall speak to them on any subject connected with the trial. The officer or person appointed to show them the place shall speak to the jurors only to the extent necessary to conduct them to and identify the place or thing in question.

(d) Submission of case to the jury. (1) At the close of the evidence, or at such earlier time during the trial as the judge reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests.

(A) The judge shall instruct the jury at the close of the evidence before argument and the judge, in the judge's discretion, after the opening statements, may instruct the jury on such matters as in the judge's opinion will assist the jury in considering the evidence as it is presented.

(B) The judge shall instruct the jury as to the offense charged and any lesser included offense in cases where there is some evidence which would reasonably justify an adjudication for some lesser included offense that is:

(i) A lesser degree of the same offense;

(ii) an offense where all elements of the lesser offense are identical to some of the elements of the offense charged;

(iii) an attempt to commit the offense charged; or

(iv) an attempt to commit an offense defined under subsection (d)(1)(B)(i) or (ii).

(C) The court shall pass upon the objections to the instructions and shall either give each instruction as requested or proposed or refuse to do so, or give the requested instruction with modification. All instructions given or requested must be filed as a part of the record of the case. The court reporter shall record all objections to

the instructions given or refused by the court, together with modifications made, and the rulings of the court. No party may assign as error the giving or failure to give an instruction, including a lesser included offense instruction, unless the party objects thereto before the jury retires to consider its verdict. The attorney making the objection shall specify the matter to which the party objects and the basis of the objection unless the instruction or the failure to give an instruction is clearly erroneous. Opportunity shall be given to make the objections out of the hearing of the jury.

(2) When the jury has been instructed, unless the case is submitted to the jury on either side or on both sides without argument, the county or district attorney may commence and may conclude the argument. If there is more than one alleged juvenile offender, the court shall determine their relative order in presentation of evidence and argument. In arguing the case, comment may be made upon the law of the case as given in the instructions, as well as upon the evidence.

(e) Motion for judgment of acquittal. (1) The court on motion of a juvenile or on its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the complaint after the evidence on either side is closed if the evidence is insufficient to sustain a finding of guilt for such offense or offenses. If a juvenile's motion for judgment of acquittal at the close of the evidence offered by the county or district attorney is not granted, the juvenile may offer evidence without having reserved the right.

(2) If a motion for judgment of acquittal is made at the close of all the evidence, the court may reserve decision on the motion, submit the case to the jury and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict.

(3) If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within seven days after the jury is discharged or within such further time as the court may fix during the seven-day period. If a verdict of guilty is returned, the court may on such motion set aside the verdict and enter judgment of acquittal. It shall not be necessary to the making of such a motion that a similar motion has been made prior to the submission of the case to the jury.

(f) Jury deliberation. (1) When the case is finally submitted to the jury, they shall retire for deliberation. They must be kept together in some convenient place under charge of a duly sworn officer until they agree upon a verdict, or are discharged by the court, subject to the discretion of the court to permit them to separate temporarily at night, and at their meals. The officer in charge of the jury shall not communicate to the jury, or allow any communications to be made to them, unless by order of the court; and before their verdict is rendered, the officer in charge of the jury shall not communicate to any person the state of their deliberations, or the verdict agreed upon. No person other than members of the jury shall be present in the jury room during deliberations.

(2) If the jury is permitted to separate, either during the trial or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with, or allow themselves to be addressed by any other person on any subject of the trial, and that it is their duty not to form or express an opinion thereon until the case is finally submitted to them, and that such admonition shall apply to every subsequent separation of the jury.

(3) After the jury has retired for deliberation, if they desire to be informed as to any part of the law or evidence arising in the case, they may request the officer to conduct them to the court, where the information on the point of the law shall be given, or the evidence shall be read or exhibited to them in the presence of the juvenile, unless the juvenile is voluntarily absent, and the juvenile's attorney, after notice to the county or district attorney.

(4) The jury may be discharged by the court on account of the sickness of a juror or other accident or calamity, or other necessity to be found by the court requiring their discharge, or by consent of both parties, or after they have been kept together until it satisfactorily appears that there is no probability of their agreeing.

(g) Verdict, procedure. The verdict shall be written, signed by the presiding juror and read by the clerk to the jury, and the inquiry made whether it is the jury's verdict. If any juror disagrees, the jury must be sent out again; but if no disagreement is expressed, and neither party requires the jury to be polled, the verdict is complete and the jury discharged from the case. If the verdict is defective in form only, it may be corrected by the court, with the assent of the jury, before it is discharged.

(h) Mistrials. (1) The trial court may terminate the trial and order a mistrial at any time that the court finds termination is necessary because:

(A) It is physically impossible to proceed with the trial in conformity with the law;

(B) there is a legal defect in the proceedings which would make any judgment entered upon a verdict reversible as a matter of law and the juvenile requests or consents to the declaration of a mistrial;

(C) prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with

the trial without injustice to either the juvenile or the state;

(D) the jury is unable to agree upon a verdict;

(E) false statements of a juror on voir dire prevent a fair trial; or

(F) the trial has been interrupted pending a determination of the juvenile's competency to stand trial.

(2) When a mistrial is ordered, the court shall direct that the case be retained on the docket for trial or such other proceedings as may be proper and that the juvenile may be held in custody pending such further proceedings pursuant to this code.

History: L. 2006, ch. 169, § 57; L. 2011, ch. 60, § 5, July 1.

Source or Prior Law:

38-1656.

38-2358. Recorded statement of child victim admissible in certain cases; limitations. (a) In any proceeding pursuant to the code in which a child less than 13 years of age is alleged to be a victim of the offense, a recording of an oral statement of the child, made before the proceeding began, is admissible in evidence if:

(1) The court determines that the time, content and circumstances of the statement provide sufficient indicia of reliability;

(2) no attorney for any party is present when the statement is made;

(3) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(4) the recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered;

(5) the statement is not made in response to questioning calculated to lead the child to make a particular statement or is clearly shown to be the child's statement and not made solely as a result of a leading or suggestive question;

(6) every voice on the recording is identified;

(7) the person conducting the interview of the child in the recording is present at the proceeding and is available to testify or be cross-examined by any party;

(8) each party to the proceeding is afforded an opportunity to view the recording before it is offered into evidence, and a copy of a written transcript is provided to the parties; and

(9) the child is available to testify.

(b) If a recording is admitted in evidence under this section, any party to the proceeding may call the child to testify and be cross-examined, either in the courtroom or as provided by K.S.A. 2011 Supp. 38-2359, and amendments thereto.

History: L. 2006, ch. 169, § 58; Jan. 1, 2007.

Source or Prior Law:

38-1657.

38-2359. Record by electronic means of testimony of child victim admissible in certain cases, limitations; objections; restrictions. (a) On motion of the attorney for any party to a proceeding pursuant to the Kansas juvenile offenders code in which a child less than 13 years of age is alleged to be a victim of the offense, the court may order that the testimony of the child be taken:

(1) In a room other than the courtroom and be televised by closed-circuit equipment in the courtroom to be viewed by the court and the finder of fact in the proceeding; or

(2) outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact in the proceeding if: (A) The recording is both visual and aural and is recorded on film or videotape or by other electronic means; (B) the recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered; (C) every voice on the recording is identified; and (D) each party to the proceeding is afforded an opportunity to view the recording before it is shown in the courtroom, and a copy of a written transcript is provided to the parties. The state must establish by clear and convincing evidence that to require the child who is the alleged victim to testify in open court will so traumatize the child as to prevent the child from reasonably communicating to the jury or render the child unavailable to testify. The court shall make such an individualized finding before the state is permitted to proceed under this section.

(b) At the taking of testimony under this section:

(1) Only the attorneys for the juvenile, the state and the child; any person whose presence would contribute to the welfare and well-being of the child; and persons necessary to operate the recording or closed-circuit equipment may be present in the room with the child during the child's testimony;

(2) only the attorneys may question the child;

(3) the persons operating the recording or closed-circuit equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during the child's testimony but does not permit the child to see or hear them; and

(4) the court shall permit the juvenile to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the juvenile.

(c) If the testimony of a child is taken as provided by this section, the child shall not be compelled to testify in court during the proceeding.

(d) (1) Any objection by any party to the proceeding that the recording under subsection (a)(2) is inadmissible must be made by written motion filed with the court at least seven days before the commencement of the proceeding. An objection under this subsection shall specify the portion of the recording which is objectionable and the reasons for the objection. Failure to file an objection within the time provided by this subsection shall constitute waiver of the right to object to the admissibility of the recording unless the court, in its discretion, determines otherwise.

(2) The provisions of this subsection shall not apply to any objection to admissibility for the reason that the recording has been materially altered.

History: L. 2006, ch. 169, § 59; Jan. 1, 2007.

Source or Prior Law:

38-1658.

38-2360. Post adjudication orders and hearings. (a) At any time after the juvenile has been adjudicated to be a juvenile offender, the court shall order one or more of the tools described in this subsection to be submitted to assist the court unless the court finds that adequate and current information is available from a previous investigation, report or other sources:

(1) An evaluation and written report by a mental health or a qualified professional stating the psychological or emotional development or needs of the juvenile. The court also may order a report from any mental health or qualified professional who has previously evaluated the juvenile stating the psychological or emotional development needs of the juvenile. If the court orders an evaluation as provided in this section, a parent of the juvenile shall have the right to obtain an independent evaluation at the expense of the parent.

(2) A report of the medical condition and needs of the juvenile. The court also may order a report from any physician who has been attending the juvenile, stating the diagnosis, condition and treatment afforded the juvenile.

(3) An educational needs assessment of the juvenile from the chief administrative officer of the school which the juvenile attends or attended to provide to the court information that is readily available which the school officials feel would properly indicate the educational needs of the juvenile. The educational needs assessment may include a meeting involving any of the following: (A) The juvenile's parents; (B) the juvenile's teacher or teachers; (C) the school psychologist; (D) a school special services representative; (E) a representative of the commissioner; (F) the juvenile's court appointed special advocate; (G) the juvenile's foster parents or legal guardian; and (H) other persons that the chief administrative officer of the school, or the officer's designee, deems appropriate.

(4) Any other presentence investigation and report from a court services officer which includes: (A) The circumstances of the offense; (B) the attitude of the complainant, victim or the victim's family; (C) the record of juvenile offenses; (D) the social history of the juvenile; and (E) the present condition of the juvenile. Except where specifically prohibited by law, all local governmental public and private educational institutions and state agencies shall furnish to the officer conducting the predispositional investigation the records the officer requests. Predispositional investigations shall contain other information prescribed by the court.

(5) The court in its discretion may direct that the parents submit a domestic relations affidavit.

(b) Expenses for post adjudication tools may be waived or assessed pursuant to subsection (c)(2) of K.S.A. 2011 Supp. 38-2314, and amendments thereto.

(c) The court shall make any of the reports ordered pursuant to subsection (a) available to the attorneys and shall allow the attorneys a reasonable time to review the report before ordering the sentencing of the juvenile offender.

(d) At any time prior to sentencing, the judge, at the request of a party, shall hear additional evidence as to proposals for reasonable and appropriate sentencing of the case.

History: L. 2006, ch. 169, § 60; Jan. 1, 2007.

Source or Prior Law:

38-1661, 38-1662.

DISPOSITIONAL PROCEDURE

38-2361. Sentencing alternatives. (a) Upon adjudication as a juvenile offender pursuant to K.S.A. 2011 Supp. 38-2356, and amendments thereto, modification of sentence pursuant to K.S.A. 201 Supp. 38-2367, and amendments thereto, or violation of a condition of sentence pursuant to K.S.A. 2011 Supp. 38-2368, and amendments thereto, and subject to subsection (a) of K.S.A. 2011 Supp. 38-2365, and amendments thereto, the court may impose one or more of the following sentencing alternatives. In the event that any sentencing alternative chosen constitutes an order authorizing or requiring removal of the juvenile from the juvenile's home and such findings either have not previously been made or the findings are not or may no longer be current, the court shall make determinations as required by K.S.A. 2011 Supp. 38-2334 and 38-2335, and amendments thereto.

(1) Place the juvenile on probation through court services or community corrections for a fixed period, subject to terms and conditions the court deems appropriate consistent with juvenile justice programs in the community.

(2) Order the juvenile to participate in a community based program available in such judicial district subject to the terms and conditions the court deems appropriate. This alternative shall not be ordered with the alternative in paragraph (12) and when ordered with the alternative in paragraph (10) shall constitute a recommendation. Requirements pertaining to child support may apply if custody is vested with other than a parent.

(3) Place the juvenile in the custody of a parent or other suitable person, subject to terms and conditions consistent with juvenile justice programs in the community. This alternative shall not be ordered with the alternative in paragraph (10) or (12). Requirements pertaining to child support may apply if custody is vested with other than a parent.

(4) Order the juvenile to attend counseling, educational, mediation or other sessions, or to undergo a drug evaluation pursuant to subsection (b).

(5) Suspend or restrict the juvenile's driver's license or privilege to operate a motor vehicle on the streets and highways of this state pursuant to subsection (c).

(6) Order the juvenile to perform charitable or community service work.

(7) Order the juvenile to make appropriate reparation or restitution pursuant to subsection (d).

(8) Order the juvenile to pay a fine not exceeding $1,000 pursuant to subsection (e).

(9) Place the juvenile under a house arrest program administered by the court pursuant to section 249 of Chapter 136 of the 2011 Session Laws of Kansas, and amendments thereto.

(10) Place the juvenile in the custody of the commissioner as provided in K.S.A. 2011 Supp. 38-2365, and amendments thereto. This alternative shall not be ordered with the alternative in paragraph (3) or (12). Except for a mandatory drug and alcohol evaluation, when this alternative is ordered with alternatives in paragraphs (2), (4) and (9), such orders shall constitute a recommendation by the court. Requirements pertaining to child support shall apply under this alternative.

(11) Commit the juvenile to a sanctions house for a period no longer than 28 days subject to the provisions of subsection (f).

(12) Commit the juvenile directly to the custody of the commissioner for a period of confinement in a juvenile correctional facility and a period of aftercare pursuant to K.S.A. 2011 Supp. 38-2369, and amendments thereto. The provisions of K.S.A. 2011 Supp. 38-2365, and amendments thereto, shall not apply to juveniles committed pursuant to this provision, provided however, that 21 days prior to the juvenile's release from a juvenile correctional facility, the commissioner or designee shall notify the court of the juvenile's anticipated release date. The court shall set and hold a permanency hearing pursuant to K.S.A. 2011 Supp. 38-2365, and amendments thereto, within seven days after the juvenile's release. This alternative may be ordered with the alternative in paragraph (7). Requirements pertaining to child support shall apply under this alternative.

(b) If the court orders the juvenile to attend counseling, educational, mediation or other sessions, or to undergo a drug and alcohol evaluation pursuant to subsection (a)(4), the following provisions apply:

(1) The court may order the juvenile offender to participate in counseling or mediation sessions or a program of education, including placement in an alternative educational program approved by a local school board. The costs of any counseling or mediation may be assessed as expenses in the case. No mental health center shall charge a fee for court-ordered counseling greater than what the center would have charged the person receiving the counseling if the person had requested counseling on the person's own initiative. No mediator shall charge a fee for court-ordered mediation greater than what the mediator would have charged the person participating in the mediation if the person had requested mediation on the person's own initiative. Mediation may include the victim but shall not be mandatory for the victim; and

(2) if the juvenile has been adjudicated to be a juvenile by reason of a violation of a statute that makes such a requirement, the court shall order and, if adjudicated for any other offense, the court may order the juvenile to submit to and complete a drug and alcohol evaluation by a community-based drug and alcohol safety action program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established by that statute for such evaluation. The court may waive the mandatory evaluation if the court finds that the juvenile completed a drug and alcohol evaluation, approved by the community-based alcohol and drug safety action program, within 12 months before sentencing. If the evaluation occurred more than 12 months before sentencing, the court shall order the juvenile to resubmit to and complete the evaluation and program as provided herein. If the court finds that the juvenile and those legally liable for the juvenile's support are indigent, the court may waive the fee. In no event shall the fee be assessed against the commissioner or the juvenile justice authority nor shall the fee be assessed against the secretary of social and rehabilitation services or the department of social and rehabilitation services if the juvenile is in the secretary's care, custody and control.

(c) If the court orders suspension or restriction of a juvenile offender's driver's license or privilege to operate a motor vehicle on the streets and highways of this state pursuant to subsection (a)(5), the following provisions apply:

(1) The duration of the suspension ordered by the court shall be for a definite time period to be determined by the court. Upon suspension of a license pursuant to this subsection, the court shall require the juvenile offender to surrender the license to the court. The court shall transmit the license to the division of motor vehicles of the department of revenue, to be retained until the period of suspension expires. At that time, the licensee may apply to the division for return of the license. If the license has expired, the juvenile offender may apply for a new license, which shall be issued promptly upon payment of the proper fee and satisfaction of other conditions established by law for obtaining a license unless another suspension or revocation of the juvenile offender's privilege to operate a motor vehicle is in effect. As used in this subsection, "highway" and "street" have the meanings provided by K.S.A. 8-1424 and 8-1473, and amendments thereto. Any juvenile offender who does not have a driver's license may have driving privileges revoked. No Kansas driver's license shall be issued to a juvenile offender whose driving privileges have been revoked pursuant to this section for a definite time period to be determined by the court; and

(2) in lieu of suspending a juvenile offender's driver's license or privilege to operate a motor vehicle on the highways of this state, the court may enter an order which places conditions on the juvenile offender's privilege of operating a motor vehicle on the streets and highways of this state, a certified copy of which the juvenile offender shall be required to carry any time the juvenile offender is operating a motor vehicle on the streets and highways of this state. The order shall prescribe a definite time period for the conditions imposed. Upon entering an order restricting a juvenile offender's license, the court shall require the juvenile offender to surrender such juvenile offender's license to the court. The court shall transmit the license to the division of vehicles, together with a copy of the order. Upon receipt thereof, the division of vehicles shall issue without charge a driver's license which shall indicate on its face that conditions have been imposed on the juvenile offender's privilege of operating a motor vehicle and that a certified copy of the order imposing the conditions is required to be carried by the juvenile offender when operating a motor vehicle on the streets and highways of this state. If the juvenile offender is a nonresident, the court shall cause a copy of the order to be transmitted to the division and the division shall forward a copy of it to the motor vehicle administrator of the juvenile offender's state of issuance. The court shall furnish to any juvenile offender whose driver's license has had conditions imposed on it under this section a copy of the order, which shall be recognized as a valid Kansas driver's license until the division issues the restricted license provided for in this subsection. Upon expiration of the period of time for which conditions are imposed pursuant to this subsection, the juvenile offender may apply to the division for the return of the license previously surrendered by the juvenile offender. In the event the license has expired, the juvenile offender may apply to the division for a new license, which shall be issued immediately by the division upon payment of the proper fee and satisfaction of the other conditions established by law unless such juvenile offender's privilege to operate a motor vehicle on the streets and highways of this state has been suspended or revoked prior thereto. If any juvenile offender violates any of the conditions imposed under this subsection, the juvenile offender's driver's license or privilege to operate a motor vehicle on the streets and highways of this state shall be revoked for a period as determined by the court in which the juvenile offender is convicted of violating such conditions.

(d) The following provisions apply to the court's determination of whether to order reparation or restitution pursuant to subsection (a)(7):

(1) The court shall order the juvenile to make reparation or restitution to the aggrieved party for the damage or loss caused by the juvenile offender's offense unless it finds compelling circumstances that would render a plan of reparation or restitution unworkable. If the court finds compelling circumstances that would render a plan of reparation or restitution unworkable, the court shall enter such findings with particularity on the record. In lieu of reparation or restitution, the court may order the juvenile to perform charitable or social service for organizations performing services for the community; and

(2) restitution may include, but shall not be limited to, the amount of damage or loss caused by the juvenile's offense. Restitution may be made by payment of an amount fixed by the court or by working for the parties sustaining loss in the manner ordered by the court. An order of monetary restitution shall be a judgment against the juvenile that may be collected by the court by garnishment or other execution as on judgments in civil cases. Such judgment shall not be affected by the termination of the court's jurisdiction over the juvenile offender.

(e) If the court imposes a fine pursuant to subsection (a)(8), the following provisions apply:

(1) The amount of the fine may not exceed $1,000 for each offense. The amount of the fine should be related to the seriousness of the offense and the juvenile's ability to pay. Payment of a fine may be required in a lump sum or installments;

(2) in determining whether to impose a fine and the amount to be imposed, the court shall consider that imposition of a fine is most appropriate in cases where the juvenile has derived pecuniary gain from the offense and that imposition of a restitution order is preferable to imposition of a fine; and

(3) any fine imposed by court shall be a judgment against the juvenile that may be collected by the court by garnishment or other execution as on judgments in civil cases. Such judgment shall not be affected by the termination of the court's jurisdiction over the juvenile.

(f) If the court commits the juvenile to a sanctions house pursuant to subsection (a)(11), the following provisions shall apply:

(1) The court may order commitment for up to 28 days for the same offense or violation of sentencing condition. The court shall review the commitment every seven days and, may shorten the initial commitment or, if the initial term is less than 28 days, may extend the commitment;

(2) if, in the sentencing order, the court orders a sanctions house placement for a verifiable probation violation and such probation violation occurs, the juvenile may immediately be taken to a sanctions house and detained for no more than 48 hours, excluding Saturdays, Sundays and, holidays, and days on which the office of the clerk of the court is not accessible, prior to court review of the placement. The court and all parties shall be notified of the sanctions house placement; and

(3) a juvenile over 18 years of age and less than 23 years of age at sentencing shall be committed to a county jail, in lieu of a sanctions house, under the same time restrictions imposed by paragraph (1), but shall not be committed to or confined in a juvenile detention facility.

(g) Any order issued by the judge pursuant to this section shall be in effect immediately upon entry into the court's minutes.

(h) In addition to the requirements of K.S.A. 2011 Supp. 38-2373, and amendments thereto, if a person is under 18 years of age and convicted of a felony or adjudicated as a juvenile offender for an offense if committed by an adult would constitute the commission of a felony, the court shall forward a signed copy of the journal entry to the commissioner within 30 days of final disposition.

(i) Except as further provided, if a juvenile has been adjudged to be a juvenile offender for an offense that if committed by an adult would constitute the commission of: (1) Aggravated human trafficking, as defined in K.S.A. 2011 Supp. 21-5426, and amendments thereto, if the victim is less than 14 years of age; (2) rape, as defined in subsection (a)(3) of K.S.A. 2011 Supp. 21-5503, and amendments thereto; (3) aggravated indecent liberties with a child, as defined in subsection (b)(3) of K.S.A. 2011 Supp. 21-5506, and amendments thereto; (4) aggravated criminal sodomy, as defined in subsection (b)(1) or (b)(2) of K.S.A. 2011 Supp. 21-5504, and amendments thereto; (5) promoting prostitution, as defined in K.S.A. 2011 Supp. 21-6420, and amendments thereto, if the prostitute is less than 14 years of age; (6) sexual exploitation of a child, as defined in subsection (a)(1) or (a)(4) of K.S.A. 2011 Supp. 21-5510, and amendments thereto, if the victim is less than 14 years of age; or (7) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 2011 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of an offense defined in parts (1) through (6); the court shall issue an order prohibiting the juvenile from attending the attendance center that the victim of the offense attends. If only one attendance center exists, for which the victim and juvenile are eligible to attend, in the school district where the victim and the juvenile reside, the court shall hear testimony and take evidence from the victim, the juvenile, their families and a representative of the school district as to why the juvenile should or should not be allowed to remain at the attendance center attended by the victim. After such hearing, the court may issue an order prohibiting the juvenile from attending the attendance center that the victim of the offense attends.

(j) The sentencing hearing shall be open to the public as provided in K.S.A. 2011 Supp. 38-2353, and amendments thereto.

History: L. 2006, ch. 169, § 61; L. 2010, ch. 11, § 9; L. 2010, ch. 155, § 15; L. 2011, ch. 30, § 168, July 1.

Source or Prior Law:

38-1663.

Revisor's Note:

Section was also amended by L. 2010, ch. 75, § 20 and L. 2010, ch. 122, § 6, but those versions were repealed by L. 2010, ch. 155, § 26.

38-2362. Orders relating to parents. (a) When sentencing a juvenile offender, the court may order a juvenile offender's parent to participate in counseling, mediation sessions or an alcohol and drug evaluation and treatment program ordered as part of the juvenile offender's sentence under K.S.A. 2011 Supp. 38-2361, and amendments thereto, or to participate in parenting classes.

(1) Upon entering an order requiring a juvenile offender's parent to attend counseling sessions or mediation, the court shall give the parent notice of the order. The notice shall inform the parent of the parent's right to request a hearing within 14 days after entry of the order and the parent's right to employ an attorney to represent the parent at the hearing or, if the parent is financially unable to employ an attorney, the parent's right to request the court to appoint an attorney to represent the parent.

(2) If the parent does not request a hearing within 14 days after entry of the order, the order shall take effect at that time.

(3) If the parent requests a hearing, the court shall set the matter for hearing and, if requested, shall appoint an attorney to represent the parent. The expense and fees of the appointed attorney may be allowed and assessed as provided by K.S.A. 2011 Supp. 38-2306, and amendments thereto.

(b) In addition to any other orders provided for by this section, the parent of a juvenile offender may be held responsible for the costs of sanctions or the support of the juvenile offender as follows:

(1) The board of county commissioners of a county may provide by resolution that the parent of any juvenile offender placed under a house arrest program pursuant to subsection (a)(9) of K.S.A. 2011 Supp. 38-2361, and amendments thereto, shall be required to pay to the county the cost of such house arrest program. The board of county commissioners shall prepare a sliding financial scale based on the ability of the parent to pay for such a program.

(2) If child support has been requested and a parent has a duty to support the juvenile offender, the court may order, and when custody is placed with the commissioner shall order, one or both parents to pay child support. The court shall determine, for each parent separately, whether the parent already is subject to an order to pay support for the juvenile. If the parent currently is not ordered to pay support for the juvenile and the court has personal jurisdiction over the parent, the court shall order the parent to pay child support in an amount determined under K.S.A. 2011 Supp. 38-2319, and amendments thereto. Except for good cause shown, the court shall issue an immediate income withholding order pursuant to K.S.A. 2011 Supp. 23-3101 *et seq.*, and amendments thereto, for each parent ordered to pay support under this subsection, regardless of whether a payor has been identified for the parent. A parent ordered to pay child support under this subsection shall be notified, at the hearing or otherwise, that the child support order may be registered pursuant to K.S.A. 2011 Supp. 38-2321, and amendments thereto. The parent also shall be informed that, after registration, the income withholding order may be served on the parent's employer without further notice to the parent and the child support order may be enforced by any method allowed by law. Failure to provide this notice shall not affect the validity of the child support order.

History: L. 2006, ch. 169, § 62; L. 2010, ch. 135, § 53; L. 2012, ch. 162, § 70, May 31, 2012.

Source or Prior Law:

38-1663.

38-2363. Duty of parents and others to aid in enforcement of court orders; failure, contempt. A parent, or adult with whom a juvenile resides, may be ordered by the court to report any probation violations or conditional release contract violations, aid in enforcing terms and conditions of probation or conditional release or other orders of the court or any of the above. Any person placed under an order to report any probation violations or conditional release contract violations, aid in enforcing terms and conditions of probation or conditional release or other orders of the court or any of the above who fails to do so may be proceeded against for indirect contempt of court as provided in K.S.A. 20-1204a et seq., and amendments thereto.

History: L. 2006, ch. 169, § 63; Jan. 1, 2007.

Source or Prior Law:

38-1668.

38-2364. Extended jurisdiction juvenile prosecution; violating conditions of stayed juvenile sentence; hearing. (a) If an extended jurisdiction juvenile prosecution results in a guilty plea or finding of guilt, the court shall:

(1) Impose one or more juvenile sentences under K.S.A. 2011 Supp. 38-2361, and amendments thereto; and

(2) impose an adult criminal sentence, the execution of which shall be stayed on the condition that the juvenile offender not violate the provisions of the juvenile sentence and not commit a new offense.

(b) When it appears that a person sentenced as an extended jurisdiction juvenile has violated one or more conditions of the juvenile sentence or is alleged to have committed a new offense, the court, without notice, may revoke the stay and juvenile sentence and direct that the juvenile offender be immediately taken into custody and delivered to the secretary of corrections pursuant to section 281 of chapter 136 of the 2011 Session Laws of Kansas, and amendments thereto. The court shall notify the juvenile offender and such juvenile offender's attorney of record, in writing by personal service, as provided in K.S.A. 60-303, and amendments thereto, or certified mail, return receipt requested, of the reasons alleged to exist for revocation of the stay of execution of the adult sentence. If the juvenile offender challenges the reasons, the court shall hold a hearing on the issue at which the juvenile offender is entitled to be heard and represented by counsel. After the hearing, if the court finds by a preponderance of the evidence that the juvenile committed a new offense or violated one or more conditions of the juvenile's sentence, the court shall revoke the juvenile sentence and order the imposition of the adult sentence previously ordered pursuant to subsection (a)(2) or, upon agreement of the county or district attorney and the juvenile offender's attorney of record, the court may modify the adult sentence previously ordered

pursuant to subsection (a)(2). Upon such finding, the juvenile's extended jurisdiction status is terminated, and juvenile court jurisdiction is terminated. The ongoing jurisdiction for any adult sanction, other than the commitment to the department of corrections, is with the adult court. The juvenile offender shall be credited for time served in a juvenile correctional or detention facility on the juvenile sentence as service on any authorized adult sanction.

(c) Upon becoming 18 years of age, any juvenile who has been sentenced pursuant to subsection (a) and is serving the juvenile sentence, may move for a court hearing to review the sentence. If the sentence is continued, the court shall set a date of further review in no later than 36 months.

History: L. 2006, ch. 169, § 64; L. 2010, ch. 163, § 1; L. 2011, ch. 30, § 169, July 1.

Source or Prior Law:

38-16,126.

38-2365. Juvenile offender placed in custody of commissioner; placement; permanency plan; progress report to court; hearing; notification; termination of parental rights. (a) When a juvenile offender has been placed in the custody of the commissioner, the commissioner shall have a reasonable time to make a placement. If the juvenile offender has not been placed, any party who believes that the amount of time elapsed without placement has exceeded a reasonable time may file a motion for review with the court. In determining what is a reasonable amount of time, matters considered by the court shall include, but not be limited to, the nature of the underlying offense, efforts made for placement of the juvenile offender and the availability of a suitable placement. The commissioner shall notify the court, the juvenile's attorney of record and the juvenile's parent, in writing, of the initial placement and any subsequent change of placement as soon as the placement has been accomplished. The notice to the juvenile offender's parent shall be sent to such parent's last known address or addresses. The court shall have no power to direct a specific placement by the commissioner, but may make recommendations to the commissioner. The commissioner may place the juvenile offender in an institution operated by the commissioner, a youth residential facility or any other appropriate placement. If the court has recommended an out-of-home placement, the commissioner may not return the juvenile offender to the home from which removed without first notifying the court of the plan.

(b) If a juvenile is in the custody of the commissioner, the commissioner shall prepare and present a permanency plan at sentencing or within 30 days thereafter. If a permanency plan is already in place under a child in need of care proceeding, the court may adopt the plan under the present proceeding. The written permanency plan shall provide for reintegration of the juvenile into such juvenile's family or, if reintegration is not a viable alternative, for other permanent placement of the juvenile. Reintegration may not be a viable alternative when: (1) The parent has been found by a court to have committed murder in the first degree, K.S.A. 21-3401, prior to its repeal, or K.S.A. 2011 Supp. 21-5402, and amendments thereto, murder in the second degree, K.S.A. 21-3402, prior to its repeal, or K.S.A. 2011 Supp. 21-5403, and amendments thereto, capital murder, K.S.A. 21-3439, prior to its repeal, or K.S.A. 2011 Supp. 21-5401, and amendments thereto, voluntary manslaughter, K.S.A. 21-3403, prior to it repeal, or K.S.A. 2011 Supp. 21-5404, and amendments thereto, of a child or violated a law of another state which prohibits such murder or manslaughter of a child;

(2) the parent aided or abetted, attempted, conspired or solicited to commit such murder or voluntary manslaughter of a child;

(3) the parent committed a felony battery that resulted in bodily injury to the juvenile who is the subject of this proceeding or another child;

(4) the parent has subjected the juvenile who is the subject of this proceeding or another child to aggravated circumstances as defined in K.S.A. 38-1502, and amendments thereto;

(5) the parental rights of the parent to another child have been terminated involuntarily; or

(6) the juvenile has been in extended out-of-home placement as defined in K.S.A. 2011 Supp. 38-2202, and amendments thereto.

(c) If the juvenile is placed in the custody of the commissioner, the plan shall be prepared and submitted by the commissioner. If the juvenile is placed in the custody of a facility or person other than the commissioner, the plan shall be prepared and submitted by a court services officer. If the permanency goal is reintegration into the family, the permanency plan shall include measurable objectives and time schedules for reintegration.

(d) During the time a juvenile remains in the custody of the commissioner, the commissioner shall submit to the court, at least every six months, a written report of the progress being made toward the goals of the permanency plan submitted pursuant to subsections (b) and (c) and the specific actions taken to achieve the goals of the permanency plan. If the juvenile is placed in foster care, the court may request the foster parent to submit to the court, at least every six months, a report in regard to the juvenile's adjustment, progress and condition. Such report shall be made a part of the juvenile's court social file. The court shall review the plan submitted by the commissioner and the report, if any, submitted by the foster parent and determine whether reasonable efforts and progress have

been made to achieve the goals of the permanency plan. If the court determines that progress is inadequate or that the permanency plan is no longer viable, the court shall hold a hearing pursuant to subsection (e).

(e) When the commissioner has custody of the juvenile, a permanency hearing shall be held no more than 12 months after the juvenile is first placed outside such juvenile's home and at least every 12 months thereafter. Juvenile offenders who have been in extended out-of-home placement shall be provided a permanency hearing within 30 days of a request from the commissioner. The court may appoint a *guardian ad litem* to represent the juvenile offender at the permanency hearing. At each hearing, the court shall make a written finding whether reasonable efforts have been made to accomplish the permanency goal and whether continued out-of-home placement is necessary for the juvenile's safety.

(f) Whenever a hearing is required under subsection (e), the court shall notify all interested parties of the hearing date, the commissioner, foster parent and preadoptive parent or relatives providing care for the juvenile and hold a hearing. Individuals receiving notice pursuant to this subsection shall not be made a party to the action solely on the basis of this notice and opportunity to be heard. After providing the persons receiving notice an opportunity to be heard, the court shall determine whether the juvenile's needs are being adequately met; whether services set out in the permanency plan necessary for the safe return of the juvenile have been made available to the parent with whom reintegration is planned; and whether reasonable efforts and progress have been made to achieve the goals of the permanency plan.

(g) If the court finds reintegration continues to be a viable alternative, the court shall determine whether and, if applicable, when the juvenile will be returned to the parent. The court may rescind any of its prior dispositional orders and enter any dispositional order authorized by this code or may order that a new plan for the reintegration be prepared and submitted to the court. If reintegration cannot be accomplished as approved by the court, the court shall be informed and shall schedule a hearing pursuant to subsection (h). No such hearing is required when the parent voluntarily relinquishes parental rights or agrees to appointment of a permanent guardian.

(h) When the court finds any of the following conditions exist, the county or district attorney or the county or district attorney's designee shall file a petition alleging the juvenile to be a child in need of care and requesting termination of parental rights pursuant to the Kansas code for care of children: (1) The court determines that reintegration is not a viable alternative and either adoption or permanent guardianship might be in the best interests of the juvenile;

(2) the goal of the permanency plan is reintegration into the family and the court determines after 12 months from the time such plan is first submitted that progress is inadequate; or

(3) the juvenile has been in out-of-home placement for a cumulative total of 15 of the last 22 months, excluding trial home visits and juvenile in runaway status.

Nothing in this subsection shall be interpreted to prohibit termination of parental rights prior to the expiration of 12 months.

(i) A petition to terminate parental rights is not required to be filed if one of the following exceptions is documented to exist: (1) The juvenile is in a stable placement with relatives;

(2) services set out in the case plan necessary for the safe return of the juvenile have not been made available to the parent with whom reintegration is planned; or

(3) there are one or more documented reasons why such filing would not be in the best interests of the juvenile. Documented reasons may include, but are not limited to: The juvenile has close emotional bonds with a parent which should not be broken; the juvenile is 14 years of age or older and, after advice and counsel, refuses to be adopted; insufficient grounds exist for termination of parental rights; the juvenile is an unaccompanied refugee minor; or there are international legal or compelling foreign policy reasons precluding termination of parental rights.

History: L. 2006, ch. 169, § 65; L. 2010, ch. 163, § 2; L. 2011, ch. 30, § 170, July 1.

Source or Prior Law:

38-1664.

38-2366. Juvenile offenders in custody of DOC; placement; notification to court; detainment; prohibition on admittance to juvenile correctional facility. (a) When a juvenile offender who is under 16 years of age at the time of the sentencing, has been prosecuted and convicted as an adult or under the extended jurisdiction juvenile prosecution, and has been placed in the custody of the secretary of the department of corrections, the secretary shall notify the sheriff having the offender in custody to convey such juvenile offender at a time designated by the juvenile justice authority to a juvenile correctional facility. The commissioner shall notify the court, in writing, of the initial placement of the offender in the specific juvenile correctional facility as soon as the placement has been accomplished. The commissioner shall not permit the juvenile offender to remain detained in any jail for more than 72 hours, excluding Saturdays, Sundays, legal holidays, and days on which the office of the clerk of the court is not accessible, after the commissioner has received

the written order of the court placing the offender in the custody of the commissioner. If such placement cannot be accomplished, the offender may remain in jail for an additional period of time, not exceeding 10 days, which is specified by the commissioner and approved by the court.

(b) A juvenile who has been prosecuted and convicted as an adult shall not be eligible for admission to a juvenile correctional facility. All other conditions of the offender's sentence imposed under this code, including restitution orders, may remain intact. The provisions of this subsection shall not apply to an offender who: (1) Is under 16 years of age at the time of the sentencing; (2) has been prosecuted as an adult or under extended juvenile jurisdiction; and (3) has been placed in the custody of the secretary of corrections, requiring admission to a juvenile correctional facility pursuant to subsection (a).

History: L. 2006, ch. 169, § 66; L. 2010, ch. 11, § 10; Apr. 1.

Source or Prior Law:

38-16,111

38-2367. Modification of sentence. (a) At any time after the entry of an order of custody or placement of a juvenile offender, the court, upon the court's own motion or the motion of the commissioner or parent or any party, may modify the sentence imposed. Upon receipt of the motion, the court shall fix a time and place for hearing and provide notice to the movant and to the current custodian and placement of the juvenile offender and to each party to the proceeding. Except as established in subsection (b), after the hearing, if the court finds that the sentence previously imposed is not in the best interests of the juvenile offender, the court may rescind and set aside the sentence, and enter any sentence pursuant to K.S.A. 2011 Supp. 38-2361, and amendments thereto, except that a child support order which has been registered under K.S.A. 2011 Supp. 38-2321, and amendments thereto, may only be modified pursuant to K.S.A. 2011 Supp. 38-2321, and amendments thereto.

(b) If the court determines that it is in the best interests of the juvenile offender to be returned to the custody of the parent or parents, the court shall so order.

(c) The court shall rescind an order granting custody to a parent only if the court first finds probable cause that: (1)(A) The juvenile is likely to sustain harm if not immediately removed from the home;

(B) allowing the juvenile to remain in home is contrary to the welfare of the juvenile; or

(C) immediate placement of the juvenile is in the juvenile's best interest; and

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the juvenile from the juvenile's home or that an emergency exists which threatens the safety of the juvenile. The court shall state the basis of each finding.

(d) Any time within 60 days after a court has committed a juvenile offender to a juvenile correctional facility the court may modify the sentence and enter any other sentence, except that a child support order which has been registered under K.S.A. 2011 Supp. 38-2321, and amendments thereto, may only be modified pursuant to K.S.A. 2011 Supp. 38-2321, and amendments thereto.

(e) Any time after a court has committed a juvenile offender to a juvenile correctional facility, the court may, upon motion by the commissioner, modify the sentence and enter any other sentence if the court determines that:

(1) The medical condition of the juvenile justifies a reduction in sentence; or

(2) the juvenile's exceptional adjustment and habilitation merit a reduction in sentence.

History: L. 2006, ch. 169, § 67; Jan. 1, 2007.

Source or Prior Law:

38-1665, 38-16,131.

38-2368. Violation of condition of probation or placement. (a) If it is alleged that a juvenile offender has violated a condition of probation or of a court-ordered placement, the county or district attorney, the victim of the offense committed by the offender, the assigned court services officer or the current custodian and placement of the juvenile offender may file a report with the court describing the alleged violation. The court shall provide copies of the report to the parties to the proceeding. The court, upon the court's own motion or the motion of the commissioner or any party, shall set the matter for hearing and may issue a warrant pursuant to K.S.A. 2011 Supp. 38-2342, and amendments thereto. Upon receipt of the motion, the court shall fix a time and place for hearing and provide notice to the movant and to the current custodian and placement of the juvenile offender and to each party to the proceeding. Except as set out in subsection (b), if the court finds by a preponderance of the evidence that the juvenile offender violated a condition of probation or placement, the court may extend or modify the terms of probation or placement or enter another sentence pursuant to K.S.A. 2011 Supp. 38-2361, and amendments thereto, except that a child support order which has been registered under K.S.A. 2011 Supp. 38-2321, and amendments thereto, may only be modified pursuant to K.S.A. 2011 Supp. 38-2321, and amendments thereto.

(b) The court shall not enter an order removing a juvenile from the custody of a parent pursuant to this section unless the court first finds probable cause that: (1)(A) The juvenile is likely to sustain harm if not immediately removed from the home;

(B) allowing the juvenile to remain in home is contrary to the welfare of the juvenile; or

(C) immediate placement of the juvenile is in the juvenile's best interest; and

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the juvenile from the juvenile's home or that an emergency exists which threatens the safety of the juvenile. The court shall state the basis of each finding in writing.

History: L. 2006, ch. 169, § 68; Jan. 1, 2007.

Source or Prior Law:

38-1666.

38-2369. Sentencing juvenile offenders; placement matrix; placements based on offense committed; aftercare term. (a) For the purpose of committing juvenile offenders to a juvenile correctional facility, the following placements shall be applied by the judge in felony or misdemeanor cases. If used, the court shall establish a specific term of commitment as specified in this subsection, unless the judge conducts a departure hearing and finds substantial and compelling reasons to impose a departure sentence as provided in K.S.A. 2011 Supp. 38-2371, and amendments thereto.

(1) *Violent Offenders.* (A) The violent offender I is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute an off-grid felony. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of 60 months and up to a maximum term of the offender reaching the age of 22 years, six months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of the offender reaching the age of 23 years.

(B) The violent offender II is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute a nondrug level 1, 2 or 3 felony. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of 24 months and up to a maximum term of the offender reaching the age 22 years, six months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of the offender reaching the age of 23 years.

(2) *Serious Offenders.* (A) The serious offender I is defined as an offender adjudicated as a juvenile offender for an offense;

(i) Which, if committed by an adult, would constitute a nondrug severity level 4, 5 or 6 person felony;

(ii) committed prior to July 1, 2012, which, if committed by an adult prior to July 1,2012, would constitute a drug severity level 1 or 2 felony; or

(iii) committed on or after July 1, 2012, which, if committed by an adult on or after July 1, 2012, would constitute a drug severity level 1, 2 or 3 felony.

Offenders in this category may be committed to a juvenile correctional facility for a minimum term of 18 months and up to a maximum term of 36 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 24 months.

(B) The serious offender II is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute a nondrug severity level 7, 8, 9 or 10 person felony with one prior felony adjudication. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of nine months and up to a maximum term of 18 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 24 months.

(3) *Chronic Offenders.* (A) The chronic offender I, chronic felon is defined as an offender adjudicated as a juvenile offender for an offense:

(i) Which, if committed by an adult, would constitute one present nonperson felony adjudication and two prior felony adjudications;

(ii) committed prior to July 1, 2012, which, if committed by an adult prior to July 1, 2012, would constitute one present severity level 3 felony adjudication and two prior felony adjudications; or

(iii) committed on or after July 1, 2012, which, if committed by an adult on or after July 1, 2012, would constitute one present drug severity level 4 felony adjudication and two prior felony adjudications.

Offenders in this category may be committed to a juvenile correctional facility for a minimum term of six months and up to a maximum term of 18 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 12 months.

(B) The chronic offender II, escalating felon is defined as an offender adjudicated as a juvenile offender for an offense:

(i) Which, if committed by an adult, would constitute one present felony adjudication and either two prior misdemeanor adjudications or one prior person or nonperson felony adjudication;

(ii) which, if committed by an adult, would constitute one present felony adjudication and two prior severity level 4 or 5 adjudications;

(iii) committed prior to July 1, 2012, which, if committed by an adult prior to July 1, 2012, would constitute one present severity level 3 felony adjudication and either two prior misdemeanor adjudications or one prior person or nonperson felony adjudication;

(iv) committed prior to July 1, 2012, which, if committed by an adult prior to July 1, 2012,

would constitute one present severity level 3 felony adjudication and two prior drug severity level 4 or 5 adjudications.

(v) committed on or after July 1, 2012, which, if committed by an adult on or after July 1, 2012, would constitute one present drug severity level 4 felony adjudication and either two prior misdemeanor adjudications or one prior person or nonperson felony adjudication; or

(vi) committed on or after July 1, 2012, which, if committed by an adult on or after July 1, 2012, would constitute one present drug severity level 4 felony adjudication and two prior drug severity level 4 or 5 adjudications.

Offenders in this category may be committed to a juvenile correctional facility for a minimum term of six months and up to a maximum term of 18 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 12 months.

(C) The chronic offender III, escalating misdemeanant is defined as an offender adjudicated as a juvenile offender for an offense:

(i) Which, if committed by an adult, would constitute one present misdemeanor adjudication and either two prior misdemeanor adjudications or one prior person or nonperson felony adjudication and two placement failures;

(ii) which, if committed by an adult, would constitute one present misdemeanor adjudication and two prior drug severity level 4 or 5 felony adjudications and two placement failures;

(iii) which, if committed by an adult, would constitute one present severity level 4 felony adjudication and either two prior misdemeanor adjudications or one prior person or nonperson felony adjudication and two placement failures;

(iv) which, if committed by an adult, would constitute one present drug severity level 4 or 5 felony adjudication and two prior severity level 4 drug felony adjudications and two placement failures;

(v) committed on or after July 1, 2012, which, if committed by an adult on or after July 1, 2012, would constitute one present drug severity level 5 felony adjudication and either two prior misdemeanor adjudications or one prior person or nonperson felony adjudication and two placement failures; or

(vi) committed on or after July 1, 2012, which, if committed by an adult on or after July 1, 2012, would constitute one present drug severity level 5 felony adjudication and two prior drug severity level 4 or 5 adjudications and two placement failures.

Offenders in this category may be committed to a juvenile correctional facility for a minimum term of three months and up to a maximum term of six months. The aftercare term for this offender is set at a minimum term of three months and up to a maximum term of six months.

(4) *Conditional Release Violators.* Upon finding the juvenile violated a requirement or requirements of conditional release, the court may:

(A) Subject to the limitations in subsection (a) of K.S.A. 2011 Supp. 38-2366, and amendments thereto, commit the offender directly to a juvenile correctional facility for a minimum term of three months and up to a maximum term of six months. The aftercare term for this offender shall be a minimum of two months and a maximum of six months, or the length of the aftercare originally ordered, whichever is longer.

(B) Enter one or more of the following orders:

(i) Recommend additional conditions be added to those of the existing conditional release.

(ii) Order the offender to serve a period of sanctions pursuant to subsection (f) of K.S.A. 2011 Supp. 38-2361, and amendments thereto.

(iii) Revoke or restrict the juvenile's driving privileges as described in subsection (c) of K.S.A. 2011 Supp. 38-2361, and amendments thereto.

(C) Discharge the offender from the custody of the commissioner, release the commissioner from further responsibilities in the case and enter any other appropriate orders.

(b) As used in this section: (1) "Placement failure" means a juvenile offender in the custody of the juvenile justice authority has significantly failed the terms of conditional release or has been placed out-of-home in a community placement accredited by the commissioner and has significantly violated the terms of that placement or violated the terms of probation.

(2) "Adjudication" includes out-of-state juvenile adjudications. An out-of-state offense, which if committed by an adult would constitute the commission of a felony or misdemeanor, shall be classified as either a felony or a misdemeanor according to the adjudicating jurisdiction. If an offense which if committed by an adult would constitute the commission of a felony is a felony in another state, it will be deemed a felony in Kansas. The state of Kansas shall classify the offense, which if committed by an adult would constitute the commission of a felony or misdemeanor, as person or nonperson. In designating such offense as person or nonperson, reference to comparable offenses shall be made. If the state of Kansas does not have a comparable offense, the out-of-state adjudication shall be classified as a nonperson offense.

(c) All appropriate community placement options shall have been exhausted before a chronic offender III, escalating misdemeanant shall be placed in a juvenile correctional facility. A court finding shall be made acknowledging that appropriate community placement options have been pursued and no such option is appropriate.

(d) The commissioner shall work with the community to provide on-going support and

incentives for the development of additional community placements to ensure that the chronic offender III, escalating misdemeanant sentencing category is not frequently utilized.

(e) Any juvenile offender committed to a juvenile correctional facility who is adjudicated for an offense committed while such juvenile was committed to a juvenile correctional facility, may be adjudicated to serve a consecutive term of commitment in a juvenile correctional facility.

History: L. 2006, ch. 169, § 69; L. 2012, ch. 33, § 1; L. 2012, ch. 150, § 47; July 1, 2012.

Note: This statute was amended twice during the 2012 legislative session.)

Source or Prior Law:

38-16,129.

38-2370. Good time credits; rules and regulations; minimum term. (a) For purposes of determining release of a juvenile offender, a system shall be developed whereby good behavior is the expected norm and negative behavior will be punished.

(b) The commissioner shall adopt rules and regulations to carry out the provisions of this section regarding good time calculations. Such rules and regulations shall provide circumstances upon which a juvenile offender may earn good time credits through participation in programs which may include, but not be limited to, education programs, work participation, treatment programs, vocational programs, activities and behavior modification. Such good time credits may also include the juvenile offender's willingness to examine and confront the past behavior patterns that resulted in the commission of the juvenile's offense.

(c) If the placement sentence established in K.S.A. 2011 Supp. 38-2369, and amendments thereto, is used by the court, the juvenile offender shall serve no less than the minimum term authorized under the specific category of such placement sentence.

History: L. 2006, ch. 169, § 70; Jan. 1, 2007.

Source or Prior Law:

38-16,130.

38-2371. Departure sentences; hearing; order; findings of fact; limitations. (a) (1) Whenever a person is adjudicated as a juvenile offender, the court upon motion of the state, shall hold a hearing to consider imposition of a departure sentence. The motion shall state that a departure is sought and the reasons and factors relied upon. The hearing shall be scheduled so that the parties have adequate time to prepare and present arguments regarding the issues of departure sentencing. The victim of a crime or the victim's family shall be notified of the right to be present at the hearing for the convicted person by the county or district attorney. The parties may submit written arguments to the court prior to the date of the hearing and may make oral arguments before the court at the hearing. The court shall review the victim impact statement, if available. Prior to the hearing, the court shall transmit to the juvenile offender or the juvenile offender's attorney and the prosecuting attorney copies of the predispositional investigation report.

(2) At the conclusion of the hearing or within 21 days thereafter, the court shall issue findings of fact and conclusions of law regarding the issues submitted by the parties, and shall enter an appropriate order.

(3) If a factual aspect of a crime is a statutory element of the crime, or is used to determine crime severity, that aspect of the current crime of conviction may be used as an aggravating factor only if the criminal conduct constituting that aspect of the current crime of conviction is significantly different from the usual criminal conduct captured by the aspect of the crime. Subject to this provision, the nonexclusive lists of aggravating factors provided in K.S.A. 2011 Supp. 21-6815 and 21-6816, and amendments thereto, may be considered in determining whether substantial and compelling reasons exist.

(b) If the court decides to depart on its own volition, without a motion from the state, the court must notify all parties of its intent and allow reasonable time for either party to respond if they request. The notice shall state that a departure is intended by the court and the reasons and factors relied upon.

(c) In each case in which the court imposes a sentence that deviates from the presumptive sentence, the court shall make findings of fact as to the reasons for departure regardless of whether a hearing is requested.

(d) If the sentencing judge departs from the presumptive sentence, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. When a departure sentence is appropriate, the sentencing judge may depart from the matrix as provided in this section. When a sentencing judge departs in setting the duration of a presumptive term of imprisonment:

(1) The presumptive term of imprisonment set in such departure shall not total more than double the maximum duration of the presumptive imprisonment term;

(2) the court shall have no authority to reduce the minimum term of confinement as defined within the placement matrix; and

(3) the maximum term for commitment of any juvenile offender to a juvenile correctional facility is age 22 years, 6 months.

(e) A departure sentence may be appealed as provided in K.S.A. 2011 Supp. 38-2380, and amendments thereto.

History: L. 2006, ch. 169, § 71; L. 2010, ch. 135, § 54; L. 2011, ch. 30, § 171, July 1.

Source or Prior Law:

38-16,132.

38-2372. Computation of sentence. In any action pursuant to the revised Kansas juvenile justice code in which the juvenile is adjudicated upon a plea of guilty or trial by court or jury or upon completion of an appeal, the judge, if sentencing the juvenile to incarceration, shall direct that, for the purpose of computing juvenile's sentence and release, eligibility and conditional release dates thereunder, that such sentence is to be computed from a date, to be specifically designated by the court in the sentencing order. Such date shall be established to reflect and shall be computed as an allowance for the time which the juvenile has spent incarcerated pending the disposition of the juvenile's case. In recording the date of commencement of such sentence, the date as specifically set forth by the court shall be used as the date of sentence and all good time calculations authorized by law are to be allowed on such sentence from such date as though the juvenile were actually incarcerated in a juvenile correctional facility. Such credit shall not reduce the minimum term of incarceration authorized by law for the offense of which the juvenile has been adjudicated.

History: L. 2006, ch. 169, § 72; Jan. 1, 2007.

Source or Prior Law:

38-16,133.

38-2373. Commitment to juvenile correctional facility; transfers. [See Revisor's Note.] (a) *Actions by the court.* (1) When a juvenile offender has been committed to a juvenile correctional facility, the clerk of the court shall forthwith notify the commissioner of the commitment and provide the commissioner with a certified copy of the complaint, the journal entry of the adjudication and sentencing. The court shall provide those items from the social file which could relate to a rehabilitative program. If the court wishes to recommend placement of the juvenile offender in a specific juvenile correctional facility, the recommendation shall be included in the sentence. After the court has received notice of the juvenile correctional facility designated as provided in subsection (b), it shall be the duty of the court or the sheriff of the county to deliver the juvenile offender to the facility at the time designated by the commissioner.

(2) When a juvenile offender is residing in a juvenile correctional facility and is required to go back to court for any reason, the county demanding the juvenile's presence shall be responsible for transportation, detention, custody and control of such offender. In these cases, the county sheriff shall be responsible for all transportation, detention, custody and control of such offender.

(b) *Actions by the commissioner.* (1) Within three days, excluding Saturdays, Sundays and legal holidays, after receiving notice of commitment as provided in subsection (a), the commissioner shall notify the committing court of the facility to which the juvenile offender should be conveyed, and when to effect the immediate transfer of custody and control to the juvenile justice authority. The date of admission shall be no more than five days, excluding Saturdays, Sundays and legal holidays, after the notice to the committing court. Until received at the designated facility, the continuing detention, custody, and control of and transport for a juvenile offender sentenced to a direct commitment to a juvenile correctional facility shall be the responsibility of the committing county.

(2) Except as provided by K.S.A. 2011 Supp. 38-2332, and amendments thereto, the commissioner may make any temporary out-of-home placement the commissioner deems appropriate pending placement of the juvenile offender in a juvenile correctional facility, and the commissioner shall notify the court, local law enforcement agency and school district in which the juvenile will be residing if the juvenile is still required to attend a secondary school of that placement.

(c) *Transfers.* During the time a juvenile offender remains committed to a juvenile correctional facility, the commissioner may transfer the juvenile offender from one juvenile correctional facility to another.

History: L. 2006, ch. 169, § 73; L. 2010, ch. 163, § 3; L. 2011, ch. 91, § 21; July 1.

Source or Prior Law:

38-1671.

Revisor's Note:

Section was amended twice in the 2010 Session, see also 38-2373a.

38-2373a. **History:** L. 2006, ch. 169, § 73; L. 2010, ch. 135, § 55; Repealed, L. 2011, ch. 91, § 41; July 1.

38-2374. Same; conditional release procedure; supervision; notification; aftercare services. (a) When a juvenile offender has satisfactorily completed the term of incarceration at the juvenile correctional facility to which the juvenile offender was committed or placed, the person in charge of the juvenile correctional facility shall have authority to release the juvenile offender under appropriate conditions and for a specified period of time. Prior to release from a juvenile correctional facility, the commissioner shall consider any recommendations made by the juvenile offender's community case management officer.

(b) At least 21 days prior to releasing a juvenile offender as provided in subsection (a), the person

in charge of the juvenile correctional facility shall notify the committing court of the date and conditions upon which it is proposed the juvenile offender is to be released. The person in charge of the juvenile correctional facility shall notify the school district in which the juvenile offender will be residing if the juvenile is still required to attend a school. Such notification to the school shall include the name of the juvenile offender, address upon release, contact person with whom the juvenile offender will be residing upon release, anticipated date of release, anticipated date of enrollment in school, name and phone number of case worker, crime or crimes of adjudication if not confidential based upon other statutes, conditions of release and any other information the commissioner deems appropriate. To ensure the educational success of the student, the community case manager or a representative from the residential facility where the juvenile offender will reside shall contact the principal of the receiving school in a timely manner to review the juvenile offender's case. If such juvenile offender's offense would have constituted an off-grid crime, a nondrug felony crime ranked at severity level 1, 2, 3, 4 or 5, or a drug felony crime ranked at severity level 1, 2 or 3, on or after July 1, 1993, or a drug felony crime ranked at severity level 4 on or after July 1, 2012, if committed by an adult, the person in charge of the juvenile correctional facility shall notify the county or district attorney of the county where the offender was adjudicated a juvenile offender of the date and conditions upon which it is proposed the juvenile offender is to be released. The county or district attorney shall give written notice at least seven days prior to the release of the juvenile offender to: (1) Any victim of the juvenile offender's crime who is alive and whose address is known to the court or, if the victim is deceased, to the victim's family if the family's address is known to the court; and (2) the local law enforcement agency. Failure to notify pursuant to this section shall not be a reason to postpone a release. Nothing in this section shall create a cause of action against the state or county or an employee of the state or county acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section.

(c) Upon receipt of the notice required by subsection (b), the court shall review the terms of the proposed conditional release and may recommend modifications or additions to the terms.

(d) If, during the conditional release, the juvenile offender is not returning to the county from which committed, the person in charge of the juvenile correctional facility shall also give notice to the court of the county in which the juvenile offender is to be residing.

(e) To assure compliance with conditional release from a juvenile correctional facility, the commissioner shall have the authority to prescribe the manner in which compliance with the conditions shall be supervised. When requested by the commissioner, the appropriate court may assist in supervising compliance with the conditions of release during the term of the conditional release. The commissioner may require the parent of the juvenile offender to cooperate and participate with the conditional release.

(f) For acts committed before July 1, 1999, the juvenile justice authority shall notify at least 45 days prior to the discharge of the juvenile offender the county or district attorney of the county where the offender was adjudicated a juvenile offender of the release of such juvenile offender, if such juvenile offender's offense would have constituted a class A, B or C felony before July 1, 1993, or an off-grid crime, a nondrug crime ranked at severity level 1, 2, 3, 4 or 5 or a drug crime ranked at severity level 1, 2 or 3, on or after July 1, 1993, or a drug crime ranked at severity level 4 on or after July 1, 2012, if committed by an adult. The county or district attorney shall give written notice at least 30 days prior to the release of the juvenile offender to: (1) Any victim of the juvenile offender's crime who is alive and whose address is known to the court or, if the victim is deceased, to the victim's family if the family's address is known to the court; and (2) the local law enforcement agency. Failure to notify pursuant to this section shall not be a reason to postpone a release. Nothing in this section shall create a cause of action against the state or county or an employee of the state or county acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section.

(g) Conditional release programs shall include, but not be limited to, the treatment options of aftercare services.

History: L. 2006, ch. 169, § 74; L. 2010, ch. 135, § 56; L. 2012, ch. 150, § 48; July 1, 2012.

Source or Prior Law:

38-1673.

38-2375. Same; conditional release; failure to obey; authorized dispositions. If it is alleged that a juvenile offender who has been conditionally released from a juvenile correctional facility has failed to obey the specified conditions of release, any officer assigned to supervise compliance with the conditions of release or the county or district attorney may file a report with the committing court or the court of the county in which the juvenile offender resides describing the alleged violation. The court shall provide copies of the report to the parties to the proceedings. The court, upon the court's own motion or the county or district attorney, shall set the matter for

hearing. The movant shall provide notice of the motion and hearing to each party to the proceeding and the current custodian and placement of the juvenile offender. If the court finds that a condition of release has been violated, the court may modify or impose additional conditions of release that the court considers appropriate or order that the juvenile offender be returned to the juvenile correctional facility to serve the conditional release revocation incarceration and aftercare term set by the court pursuant to the placement matrix as provided in K.S.A. 2011 Supp. 38-2369, and amendments thereto.

History: L. 2006, ch. 169, § 75; Jan. 1, 2007.

Source or Prior Law:

38-1674.

38-2376. Same; discharge from commitment; notification. (a) When a juvenile offender has reached the age of 23 years or has completed the prescribed terms of incarceration at a juvenile correctional facility, together with any conditional release following the program, the juvenile shall be discharged by the commissioner from any further obligation under the commitment unless the juvenile was sentenced pursuant to an extended jurisdiction juvenile prosecution upon court order and the commissioner transfers the juvenile to the custody of the secretary of corrections. The discharge shall operate as a full and complete release from any obligations imposed on the juvenile offender arising from the offense for which the juvenile offender was committed.

(b) At least 45 days prior to the discharge of the juvenile offender, the juvenile justice authority shall notify the court and the county or district attorney of the county where the offender was adjudicated a juvenile offender of the pending discharge of such juvenile offender, the offense would have constituted a class A, B or C felony before July 1, 1993, or an off-grid crime, a nondrug crime ranked at severity level 1, 2, 3, 4 or 5 or a drug crime ranked at severity level 1, 2 or 3, on or after July 1, 1993, or a drug crime ranked at severity level 4 on or after July 1, 2012, if committed by an adult. The county or district attorney shall give written notice at least 30 days prior to the discharge of the juvenile offender pursuant to K.S.A. 2011 Supp. 38-2379, and amendments thereto.

History: L. 2006, ch. 169, § 76; L. 2007, ch. 198 § 8; L. 2012, ch. 150, § 49; July 1, 2012.

Source or Prior Law:

38-1675.

38-2377. Notification of pending release; hearing; maximum term of imprisonment. (a) The commissioner shall notify the county or district attorney, the court, the local law enforcement agency and the school district in which the juvenile offender will be residing of such pending release at least 45 days before release if the juvenile is still required to attend school, if the juvenile offender has committed an act prior to July 1, 1999, which, if committed by a person 18 years of age or over, would have constituted: (1) A class A or B felony, before July 1, 1993, or (2) an off-grid crime, a nondrug crime ranked at severity level 1, 2, 3, 4 or 5 or a drug crime ranked at severity level 1, 2 or 3, if the offense was committed on or after July 1, 1993, and, if such juvenile is to be released. The county or district attorney shall give written notice at least 30 days prior to discharge of the juvenile offender pursuant to K.S.A. 2011 Supp. 38-2379, and amendments thereto. The county attorney, district attorney or the court on its own motion may file a motion with the court for a hearing to determine if the juvenile offender should be retained in the custody of the commissioner, pursuant to K.S.A. 2011 Supp. 38-2376, and amendments thereto. The court shall fix a time and place for hearing and shall notify each party of the time and place.

(b) Following the hearing if the court orders the commissioner to retain custody, the juvenile offender shall not be held in a juvenile correctional facility for longer than the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which the juvenile offender has been adjudicated to have committed.

(c) As used in this section, "maximum term of imprisonment" means the greatest maximum sentence authorized by computing terms as consecutive when required by K.S.A. 2011 Supp. 21-6606, and amendments thereto.

History: L. 2006, ch. 169, § 77; L. 2011, ch. 30, § 172, July 1, 2011.

Source or Prior Law:

38-1676.

38-2378. School district involvement in discharge plan. The commissioner and the school district in which a juvenile offender will be residing shall plan for the juvenile offender's release or discharge if the juvenile offender is required to attend school. The commissioner shall send the educational records for the juvenile and notice of the offenses the juvenile committed to the school district that the juvenile will be attending.

History: L. 2006, ch. 169, § 78; Jan. 1, 2007.

Source or Prior Law:

38-1677.

38-2379. Written notice by county or district attorney. (a) When a statute requires that the county or district attorney shall give written notice at least 30 days prior to the release of the juvenile offender, such notice shall be given to:

(1) Any victim of the juvenile offender's crime who is alive and whose address is known to the court or, if the victim is deceased, to the victim's family if the family's address is known to the court;

(2) the local law enforcement agency; and

(3) the school district in which the juvenile offender will be residing if the juvenile is still required to attend school.

(b) Failure to notify pursuant to this section shall not be a reason to postpone a release. Nothing in this section shall create a cause of action against the state or county of an employee of the state or county acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section.

History: L. 2006, ch. 169, § 79; Jan. 1, 2007.

Source or Prior Law:

38-1673, 38-1675.

APPEALS

38-2380. Orders appealable by juvenile; appeal of departure sentence, procedure. (a) *Order authorizing prosecution as an adult or extended jurisdiction juvenile prosecution.* (1) Unless the juvenile offender has consented to the order, a juvenile offender may take an appeal from an order authorizing prosecution as an adult. The appeal shall be taken only after conviction as an adult and in the same manner as criminal appeals, except that where the prosecution has resulted in a judgment of conviction upon a plea of guilty or *nolo contendere*, an appeal may be taken from the order authorizing prosecution pursuant to K.S.A. 2011 Supp. 38-2347, and amendments thereto, notwithstanding the provisions of subsection (a) of K.S.A. 22-3602, and amendments thereto.

(2) If on appeal the order authorizing prosecution as an adult is reversed but the finding of guilty is affirmed or the conviction was based on a plea of guilty or *nolo contendere*, the juvenile shall be deemed adjudicated to be a juvenile offender. On remand the district court shall proceed with sentencing.

(b) *Orders of adjudgment and sentencing.* The juvenile offender may appeal from an order of adjudication or sentencing, or both. The appeal shall be pursuant to K.S.A. 2011 Supp. 38-2382, and amendments thereto.

(1) Pending review of the sentence, the sentencing court or the appellate court may order the juvenile confined or placed on conditional release, including bond.

(2) On appeal from a judgment or conviction entered for an offense committed on or after July 1, 1999, the appellate court shall not review:

(A) Any sentence that is within the presumptive sentence for the crime; or

(B) any sentence resulting from an agreement between the state and the juvenile which the sentencing court approves on the record.

(3) In any appeal from a judgment of conviction imposing a sentence that departs from the presumptive sentence, sentence review shall be limited to whether the sentencing court's findings of fact and reasons justifying a departure:

(A) Are supported by the evidence in the record; and

(B) constitute substantial and compelling reasons for departure.

(4) In any appeal, the appellate court may review a claim that:

(A) A sentence that departs from the presumptive sentence resulted from partiality, prejudice, oppression or corrupt motive;

(B) the sentencing court erred in either including or excluding recognition of prior convictions or adjudications; or

(C) the sentencing court erred in ranking the crime severity level of the current crime or in determining the appropriate classification of a prior conviction or juvenile adjudication for criminal history purposes.

(5) The appellate court may reverse or affirm the sentence. If the appellate court concludes that the trial court's factual findings are not supported by evidence in the record or do not establish substantial and compelling reasons for a departure, it shall remand the case to the trial court for resentencing.

(6) The appellate court shall issue a written opinion whenever the judgment of the sentencing court is reversed. The court may issue a written opinion in any other case when it is believed that a written opinion will provide guidance to sentencing judges and others in implementing the placement. The appellate courts may provide by rule for summary disposition of cases arising under this section when no substantial question is presented by the appeal.

(7) A review under summary disposition shall be made solely upon the record that was before the sentencing court. Written briefs shall not be required unless ordered by the appellate court and the review and decision shall be made in an expedited manner according to rules adopted by the supreme court.

(c) *Priority.* Appeals under this section shall have priority over other cases except those having statutory priority.

History: L. 2006, ch. 169, § 80; Jan. 1, 2007.

Source or Prior Law:

38-1681.

38-2381. Appeals by prosecution. a) An appeal may be taken by the prosecution from an order:

(1) Dismissing proceedings when jeopardy has not attached;

(2) denying authorization to prosecute a juvenile as an adult;

(3) quashing a warrant or a search warrant;

(4) suppressing evidence or suppressing a confession or admission; or

(5) upon a question reserved by the prosecution.

(b) An appeal upon a question reserved by the prosecution shall be taken within 14 days after the juvenile has been adjudged to be a juvenile offender. Other appeals by the prosecution shall be taken within 14 days after the entry of the order appealed.

History: L. 2006, ch. 169, § 81; L. 2010, ch. 135, § 57; July 1.

Source or Prior Law:

38-1682.

38-2382. Appeals; procedure. (a) An appeal from a district magistrate judge shall be to a district judge. The appeal shall be by trial *de novo* unless the parties agree to a *de novo* review on the record of the proceedings. The appeal shall be heard within 30 days from the date the notice of appeal was filed.

(b) Appeals from a district judge shall be to the court of appeals.

(c) Procedure on appeal shall be governed by article 21 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto.

History: L. 2006, ch. 169, § 82; Jan. 1, 2007.

Source or Prior Law:

38-1683.

38-2383. Temporary orders pending appeal; status of orders appealed from. (a) Pending the determination of an appeal, any order appealed from shall continue in force unless modified by temporary orders as provided in subsection (b).

(b) While an appeal is pending, the district court may modify the order appealed from and may make temporary orders concerning the care and custody of the juvenile as the court considers advisable.

History: L. 2006, ch. 169, § 83; Jan. 1, 2007.

Source or Prior Law:

38-1684.

38-2384. Fees and expenses. When an appeal is taken pursuant to this code, fees of an attorney appointed to represent the juvenile offender shall be fixed by the district court. The fees, together with the costs of transcripts and records on appeal, shall be taxed as expenses on appeal. The court on appeal may assess the fees and expenses against the appealing party or order that they be paid from the county general fund. When the court orders the fees and expenses assessed against the appealing party:

(a) The fees and expenses shall be paid from the county general fund, subject to reimbursement by the appealing party; and

(b) the county may enforce the order as a civil judgment, except the county shall not be required to pay the docket fee or fee for execution.

History: L. 2006, ch. 169, § 84; Jan. 1, 2007.

Source or Prior Law:

38-1685.

38-2385. Certification of juvenile corrections officers; basic course of instruction; in-service training. (a) The commissioner may adopt rules and regulations establishing standards of training and provisions for certifying juvenile corrections officers.

(b) Except as provided in subsection (c), no person shall receive a permanent appointment as a juvenile corrections officer unless awarded a certificate by the commissioner which attests to satisfactory completion of a basic course of instruction. Such course of instruction shall be approved by the commissioner and shall consist of not less than 160 hours of instruction. The certificate shall be effective during the term of a person's employment, except that any person who has terminated employment with the commissioner for a period exceeding one year shall be required to be certified again.

(c) The commissioner may award a certificate which attests to the satisfactory completion of a basic course of instruction to any person who has been duly certified under the laws of another state or territory if, in the opinion of the commissioner, the requirements for certification in the other jurisdiction are equal to or exceed the requirements for certification in this state. The commissioner may waive any number of hours or courses required to complete the basic course of instruction for any person who, in the opinion of the commissioner, has received sufficient training or experience that such hours of instruction would be unduly burdensome or duplicitous.

(d) Every juvenile corrections officer shall receive not less than 40 hours of in-service training annually.

History: L. 2006, ch. 169, § 85; Jan. 1, 2007.

Source or Prior Law:

38-16,134.

38-2386. Law enforcement power. The superintendent of any juvenile correctional facility operated by the commissioner, all persons on the staff of the juvenile justice authority who are in the chain of command from the commissioner of juvenile justice to the juvenile corrections officer and every juvenile corrections officer, regardless of rank and every investigator, while acting within the scope of their duties as employees of the juvenile justice authority, shall possess such powers and duties of a law enforcement officer as are necessary for performing such duties for the

purpose of regaining or maintaining custody, security and control of any person in the custody of the commissioner and may exercise such powers and duties anywhere within the state of Kansas. Such powers and duties may be exercised outside the state of Kansas for the purpose of maintaining custody, security and control of any person in the custody of the commissioner being transported or escorted by anyone authorized to so act. Such employees of the juvenile justice authority shall be responsible to and shall be at all times under the supervision and control of the commissioner of juvenile justice or the commissioner's designee.

(b) The commissioner shall have the authority to appoint and designate special investigators. Each special investigator designated by the commissioner is hereby vested with the power and authority of peace and police officers and shall have the authority to:

(1) make arrests;

(2) conduct searches and seizures;

(3) maintain custody, security and control of any person in the custody of the commissioner; and

(4) generally enforce all the criminal laws of the state as violations of those laws are encountered during the routine performance of duty.

(c) No special investigator may carry firearms while performing such duties without having first successfully completed the training course prescribed for law enforcement officers under the Kansas law enforcement training act, K.S.A. 74-5601 et seq., and amendments thereto.

(d) Each special investigator designated shall:

(1) Be vested with law enforcement authority;

(2) be in classified service under the Kansas civil service act; and

(3) be subject to the requirements of the Kansas law enforcement training act, K.S.A. 74-5601 et seq., and amendments thereto.

(e) The commissioner may adopt rules and regulations prescribing additional training required for such special investigators.

History: L. 2006, ch. 169, § 86; L. 2012, ch. 56, § 1; July 1, 2012.

Source or Prior Law:

38-16,135.

38-2387. Application to existing cases. (a) In addition to all actions concerning a juvenile offender commenced on or after January 1, 2007, this code also applies to proceedings commenced before January 1, 2007, unless the court finds that application of a particular provision of the code would substantially interfere with the effective conduct of judicial proceedings or prejudice the rights of a party, in which case the particular provision of this code does not apply and the previous code applies.

(b) If a right is acquired, extinguished or barred upon the expiration of a prescribed period that has commenced to run under any other statute before January 1, 2007, that statute continues to apply to the right, even if it has been repealed or superceded.

History: L. 2006, ch. 169, § 87; Jan. 1, 2007.

38-2388. Awarding high school diplomas; requirements. (a) The board of education of a school district shall award a high school diploma to any person requesting a diploma if such person:

(1) Is at least 17 years of age; (2) is enrolled or resides in such school district; (3) is or has been a child in the custody of the commissioner at any time on or after such person's 14th birthday; and (4) has achieved at least the minimum high school graduation requirements adopted by the state board of education.

(b) This section shall be part of and supplemental to the revised Kansas juvenile justice code.

History: L. 2011, ch. 60, § 2; July 1.